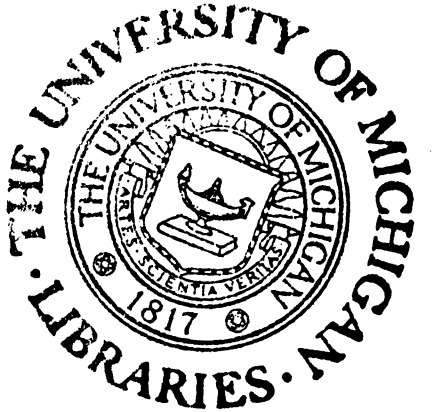
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THE DRED SCOTT CASE

THREE VOLUMES IN ONE

Volume I: A Legal Review of the Case of Dred Scott

Volume II: The Dred Scott Decision; Opinion of Chief Justice Taney . . .

Volume III: Speech of Hon. Israel Washburn, Jun., Delivered in the House of Representatives, May 19, 1860

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A LEGAL REVIEW

OF THE

CASE OF DRED SCOTT,

AS DECIDED BY THE

SUPREME COURT OF THE UNITED STATES.

FROM THE LAW REPORTER FOR JUNE, 1857.

VOLUME I

BOSTON:
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1857.

N. B. The authors of this review have made some corrections and alterations in this edition.

THE CASE OF DRED SCOTT.*

A negro held in slavery in one State, under the laws thereof, and taken by his master, for a temporary residence, into a State where slavery is prohibited by law, and thence into a Territory acquired by treaty, where slavery is prohibited by act of congress, and afterwards returning with his master into the same slave State, and resuming his residence there, is not such a citizen of that State as may sue there in the circuit court of the United States, if by the law of that State, as repeatedly declared by its highest court in recent decisions, a negro under such circumstances is a slave; although by the law of that State at the time of his return, as settled by earlier cases, he was then a freeman; and although the new decisions be not based upon the construction of the Constitution and statutes of the State, but upon the ground that the State will not enforce laws which prohibit slavery in other States or Territories. [McLean and Curtis, JJ. dissenting.]

The arguments in the case of Dred Scott, before the supreme court of the United States, and the opinions of the judges, touched upon questions of such importance, and have excited so general an interest, and awakened so much criticism, and the decision has been so often misunderstood, that the case demands a more extended notice than we usually give to adjudged cases. Of the political causes and consequences of the judgment, we have nothing to say. We propose to discuss it in its legal aspects only, and for that reason, as well as to enable the reader to carry with him the point decided, we have placed at the head of this article an abstract or marginal note, such as we should insert if we were making a report of the case.

* A report of the decision of the supreme court of the United States, and the opinions of the judges thereof, in the case of *Dred Scott* v. *John F. A. Sandford*, December Term, 1856. By Benjamin C. Howard, counsellor at law and reporter of the decisions of the supreme court of the United States. New York: D. Appleton & Co. 1857. [Being pp. 393 – 633 of the 19th volume of Howard's Reports.]

We have abstained from noticing the case till now, because we had no official report, excepting of the opinions of two of the judges. Some fault has been found with those members of the court for allowing their opinions to be printed separately. But since it is the almost uniform custom of the judges of this court to file their opinions, when delivered, with the clerk, who at once sends copies to the parties; and since there is no copyright in these opinions, as was decided in a controversy between two former reporters of the court, (*Wheaton* v. *Peters*, 8 Peters, 591;) there is no reason why they should not be published immediately.

Severe comments have also been made on the holding back of the opinions of the other judges, and on the apparent alterations made in some of them since they were pronounced. But the profession and the public are concerned to have the matured and deliberate, rather than the earliest expression of these opinions; and where the judgment itself is not affected, the parties have no ground of complaint. The individual judges alone can be injured, who, if in the majority, may find that their associates rely upon reasons and illustrations which they consider untenable, or, if in the minority, may see new arguments introduced to fortify positions to which, as originally taken, they had already replied. For an example of the ill effects of such alterations we may refer to the *Passenger Cases*, 7 Howard, 403, 430, where some of the judges repudiated parts of an opinion of the court, as delivered by one of their number, charged with that duty, in a former case on the same subject, and in which opinion they appeared, by the official report, to have concurred. And the danger of injustice to the minority is clearly shown by the following extract from Mr. Justice Daniel's note to his opinion in those cases.

"In the opinions placed on file by some of the justices constituting the majority in the decision of this case, there appearing to be positions and arguments which are not recollected as having been propounded from the bench, and which are regarded as scarcely reconcilable with the former then examined and replied to by the minority, it becomes an act of justice to the minority that these positions and arguments, now for the first time encountered, should not pass without comment. Such comment is called for, in order to vindicate the dissenting justices, first, from the folly of combating reasonings and positions which do not appear upon the record; and, secondly, from the delinquency of seeming to recoil from exigencies, with which, however

they may be supposed to have existed, the dissenting justices never were in fact confronted. It is called for by this further and obvious consideration, that, should the modification or retraction of opinions delivered in court obtain in practice, it would result in this palpable irregularity; namely, that opinions, which, as those of the court, should have been premeditated and solemnly pronounced from the bench antecedently to the opinions of the minority, may in reality be nothing more than criticisms on opinions delivered subsequently in the order of business to those of the majority, or they may be mere afterthoughts, changing entirely the true aspect of causes as they stood in the court, and presenting through the published reports what would not be a true history of the causes decided." 7 Howard, 515, 516.

We proceed to a statement of the present case. It was an action of trespass brought in the circuit court of the United States for the district of Missouri, to try Dred Scott's title to his freedom. The plaintiff was described in the writ as a citizen of Missouri, and the defendant as a citizen of New York. The declaration contained three counts, alleging assaults on the plaintiff, on Harriet Scott his wife, and on Eliza and Lizzie his children.

The defendant filed a plea to the jurisdiction, that the plaintiff was not a citizen of Missouri, "because he is a negro of African descent; his ancestors were of pure African blood, and were brought into this country and sold as negro slaves." To this plea there was a general demurrer, which was sustained by the court. The defendant then, by leave of court and with the plaintiff's consent, pleaded three pleas in bar, to the effect that the plaintiff and his wife and children were negro slaves, the property of the defendant. At the trial before the jury, the only evidence introduced was a statement of facts, signed by the parties, in substance as follows:

In 1834 the plaintiff was a negro slave belonging to Dr. Emerson, who was a surgeon in the army of the United States, and who in that year took the plaintiff from Missouri to the military post at Rock Island, in the State of Illinois, and held him there as a slave until April or May, 1836, when he removed to the military post at Fort Snelling, on the west bank of the Mississippi River, in the territory formerly known as Upper Louisiana, acquired by the United States from France, and situated north of the line of 36° 30′ north latitude, and north of the State of Missouri,

(and since called Wisconsin, and now Minnesota Territory,) where he continued to hold the plaintiff as a slave until 1838. In 1835 Harriet was the slave of Major Taliaferro, of the army of the United States, who in that year took her to Fort Snelling, and there held her as a slave until 1836, when he sold her to Dr. Emerson, who continued to hold her there as a slave until 1838. In 1836 the plaintiff and Harriet intermarried at Fort Snelling, with the consent of Dr. Emerson, who then claimed to be the owner of both; and Eliza and Lizzie are the fruit of the marriage. Eliza is about fourteen years old, and was born on board a steamboat on the Mississippi River, north of the line of 36° 30′ north latitude; Lizzie is about seven years old, and was born in the State of Missouri, at the military post called Jefferson Barracks. In 1838 Dr. Emerson removed, with the plaintiff and his said wife and oldest child, to the State of Missouri, where they have ever since resided. The defendant is Dr. Emerson's administrator. The plaintiff had previously brought a suit for his freedom in the circuit court of St. Louis County, Missouri, and obtained a verdict and judgment; but on a writ of error, the supreme court of that State reversed the judgment, and remitted the case to the inferior court, where it was continued to await the decision of this suit.

Upon these facts, the jury, by direction of the court, returned a verdict for the defendant, and the plaintiff alleged exceptions, and brought up the case by writ of error.

The principal points which have been suggested as having arisen in this case, and having been decided by the court, are the following:

1st. That a free negro cannot be a citizen of the United States.

2d. That so much of the Missouri Compromise Act, as prohibited slavery in the Territory of the United States north of 36° 30′, is unconstitutional.

3d. That a person held in slavery in one State may be taken by his master to a State where slavery is prohibited by law, and yet not be entitled to claim his freedom there.

4th. That a slave taken by his master into a free State, if he omits to claim his freedom there, and returns to a slave State, becomes a slave again.

In order to ascertain what the court did judicially determine, we shall be obliged to make a somewhat careful examination and comparison of the opinions of the judges. We also propose to consider the soundness of the positions advanced in these opinions. But first, as a guide in

this investigation, we would refer to the well settled rule of law, that an adjudged case is entitled to weight as authority upon those points only which were necessary to its decision. Chief Justice Marshall (and we could cite no greater name) said: "It is a general rule, expressly recognized by the court in *Sturges* v. *Crowninshield*, that the positive authority of a decision is co-extensive only with the facts on which it is made." *Ogden* v. *Saunders*, 12 Wheaton, 333. To the same effect is the language of Chancellor Kent: "The expressions of every judge must be taken with reference to the case on which he decided; we must look to the principle of the decision, and not to the manner in which the case is argued upon the bench, otherwise the law will be thrown into extreme confusion." 1 Kent Com. 478. And Mr. Justice Curtis, in 1853, when delivering the unanimous opinion of the supreme court of the United States, then consisting of all the judges now upon the bench, in a case in which it was necessary to dispose of a decision of the court of appeals of Maryland, which was relied on as a binding precedent, said, that to make an opinion, on any question, a decision, "there must have been an application of the judicial mind to the precise question necessary to be determined to fix the rights of the parties, and decide to whom the property in contestation belongs. And therefore this court has never held itself bound by any part of an opinion, in any case, which was not needful to the ascertainment of the right or title in question between the parties." *Carroll* v. *Carroll*, 16 Howard, 287.

That part of the report to which we naturally first look for the point adjudged, is the head note prepared by the reporter; but Mr. Howard's abstract in this case, with its five divisions and thirty-one subdivisions, is so widely different from any form of such a note ever seen before, and contains so many positions not determined by the court, nor even affirmed by a majority of the judges, that, although it is a good synopsis of the opinion of the Chief Justice, we can derive but little aid from it in our inquiry. It is somewhat curious to compare it with the head note, by the same reporter, of a former case reported at equal length, which also excited great public interest and discussion, and in which, as in this, each of the nine judges delivered a separate opinion. We refer to the *Passenger Cases*, 7 Howard, 283. That head note contained only two paragraphs, and was apparently intended to show that the court, "as a court," did not decide anything; this seems to be framed to show

that the court, this time, undertook to decide at least everything within its reach.

The head note to the *Passenger Cases*, which we copy here for convenience of comparison, is as follows:

"Statutes of the States of New York and Massachusetts, imposing taxes upon alien passengers arriving in ports of those States, declared to be contrary to the Constitution and laws of the United States, and therefore null and void."

"Inasmuch as there was no opinion of the court, as a court, the reporter refers the reader to the opinions of the judges for an explanation of the statutes and the points in which they conflicted with the Constitution and laws of the United States."

In this case of Dred Scott, the opinion of the Chief Justice is called by himself, and by the reporter, the opinion of the court. Let us consider, for a moment, its title to this distinction. When one judge, of a bench consisting of several, delivers an opinion as the opinion of the court, it is undoubtedly to be deemed the opinion of every judge, who does not express his own; but the judges who openly dissent from it are of course in no wise responsible for it; nor are those, who announce that they concur in parts of it only, to be considered as assenting to the remainder. In this case, Mr. Justice Wayne is the only judge who "concurs entirely in the opinion of the court, as it has been written and read by the Chief Justice, without any qualification of its reasoning or its conclusions." Mr. Justice Nelson commences by saying, "I shall proceed to state the grounds upon which I have arrived at the conclusion that the judgment of the court below should be affirmed," and agrees with very few of the Chief Justice's positions. Mr. Justice Grier "concurs in the opinion delivered by Mr. Justice Nelson on the questions discussed by him," and "also concurs with the opinion of the court as delivered by the Chief Justice," upon two points only. Mr. Justice Daniel, though agreeing substantially with the Chief Justice, himself discusses all the questions in the case, and concludes as follows: "In conclusion, my opinion is that the decision of the circuit court," &c. Mr. Justice Campbell begins thus: "I concur in the judgment pronounced by the Chief Justice, but the importance of the cause, the expectation and interest it has awakened, and the responsibility involved in its determination, induce me to file a separate opinion," in which he limits in some respects his concurrence. Mr. Justice Catron concurs in the opinion of Mr. Justice Nelson, and concurs in only one other point with the Chief Justice,

and, "for the reasons above stated, concurs with his brother judges" in the judgment. Mr. Justice McLean and Mr. Justice Curtis wholly dissent. It thus appears that the Chief Justice speaks only for himself and Mr. Justice Wayne, and that each of the other judges defines his own position.

We feel bound to say that the opinion of the Chief Justice is by no means the ablest or soundest of the opinions in this case. It bears marks of great labor, and of an anxiety to meet, and, as far as possible, to reply to, all objections which might be raised to its conclusions. But in its tone and manner of reasoning, as well as in the positions which it assumes, it is unworthy of the reputation of that great magistrate, who for twenty years has maintained the position of the intellectual, as well as the nominal head of the highest tribunal of the country, and to whose grasp of mind, logical power, keen discrimination, and judicial wisdom, the people have been accustomed to look, with a confidence rarely disappointed, in cases involving great principles of the Constitution of the United States, of the law of nations, and of conflicts between different systems of jurisprudence. For instances of his masterly treatment of such questions, we need only refer to his opinion in the case of *Charles River Bridge* v. *Warren Bridge*, 11 Peters, 536, which has been universally followed and assented to as a correct statement of the law of franchises; and to that in the case of the *Rhode Island Rebellion*, 7 Howard, 1, in which the extent to which the courts of the United States must be guided by the decisions of the State courts, and the acts of the executive department of the United States, in determining what is the true Constitution of a State, is defined even more clearly than was done by Mr. Webster in his celebrated argument in that case.

It must be a subject of deep regret to all who know how often Mr. Justice Wayne has been found on the side of true conservatism and sound law, when, in the unhappy divisions of the court, the old landmarks were in some danger, and who particularly remember the opinion delivered by him only three years ago on the power of congress to regulate the Territories, (which we shall hereafter cite,) to find him now one of the only two judges who can bring themselves fully to support the opinion of their chief, the other being Mr. Justice Daniel, a judge notorious for his eccentricities of constitutional interpretation, but who does not usually err against the rights of the States and their citizens. Perhaps, however, we are unable to appreciate

arguments founded on such positions as the following: "The only private property which the Constitution has *specifically recognized*, and has imposed it as a direct obligation both on the States and the federal government to protect and *enforce*, is the property of the master in his slave; no other right of property is placed by the Constitution upon the same high ground, nor shielded by a similar guaranty." p. 490. The italics are Mr. Justice Daniel's.

I. The first question, on which the court is supposed to have expressed an opinion, is whether a negro can be a citizen of the United States.

The plea to the jurisdiction presented this point in the circuit court in the following modified form, namely, Whether a person of pure African blood, whose ancestors were imported into this country as slaves, could be a citizen of Missouri, authorized to sue in the circuit court of the United States under those provisions of the Constitution and laws, which give that court jurisdiction of all controversies between citizens of different States.

There were great differences of opinion and of reasoning among the judges upon the question whether the point raised by the plea to the jurisdiction was open upon this writ of error, after the defendant had pleaded to the merits and obtained judgment in his favor in the court below. We are inclined to think that it was not open in the supreme court, for the following reasons: It has been well settled for more than half a century, that the supreme court of the United States has no jurisdiction except where it has been expressly conferred by congress, and that, as the twenty-second section of the judiciary act of 1789 permits writs of error to a circuit court of the United States only upon "final judgments and decrees in civil actions," no writ of error lies upon a mere interlocutory judgment, such as one that the defendant answer over. *Rutherford* v. *Fisher*, 4 Dallas, 22. A writ of error upon a final judgment would, of course, bring before the higher court not only that judgment, but also every previous order or ruling against the plaintiff in error, which was a necessary step for the court to take in arriving at that judgment, and which appears on the record. A final judgment is a judgment which finally disposes of the suit in the court which renders it. Thus, in this case, if the plaintiff's demurrer had been overruled, and the plea to the jurisdiction sustained, the judgment dismissing the suit would have been a final judgment, and the plaintiff might have sued out his

writ of error at once. If, on the other hand, not only this interlocutory judgment, but also the judgment on the merits, had been against the defendant, he might, on a writ of error sued out by him, have relied upon errors in either judgment against him, for the first would have been a necessary step to arriving at the second. But in this case, as actually presented to the supreme court on the plaintiff's writ of error, the only judgment against the plaintiff was the final judgment, and he could not object to the interlocutory judgment in his own favor; nor could the defendant object to that judgment, because he had finally prevailed. And if the court should be of opinion that the final judgment for the defendant was erroneous, and should therefore order the case to a new trial, and that trial should result in a judgment against the defendant, he might, by a writ of error sued out to reverse that judgment, bring before the court the original judgment of *respondeat ouster*, without which no final judgment against him could have been arrived at; and in that way prevent the court from rendering judgment in a case of which it had no jurisdiction, if such were the fact. This question is a purely technical one, and the more we have examined it, the more difficult have we found it to arrive at a satisfactory conclusion. We feel great doubts of the correctness of the view here suggested, especially as it does not entirely coincide with that of any of the judges; but it would be a waste of time to discuss it at greater length, for to prove that the question was open in the supreme court, would only be to show that it might have been decided.

It is much easier to show that it was not in fact decided. Upon this point there seems to have been some misapprehension among the judges themselves. The Chief Justice says, on page 427, that "the court is of opinion that the judgment on the plea in abatement is erroneous;" and Justices Wayne and Daniel, as well as Justices McLean and Curtis, evidently suppose this point to be decided. pp. 456, 492, 549, 590. But whatever may have been the aspect of the case when the opinions were delivered in court, and when those of the minority were printed, it now appears by Mr. Howard's report of the opinions as finally drawn up, some of which were never delivered from the bench, that a majority of the judges did not treat the question as before them for adjudication—Justices Catron and McLean being of opinion that it was not open, (pp. 518, 530;) and Justices Nelson, Grier, and Campbell, that it was not necessary to the decision of the cause, and refusing to give any opinion

upon it, (pp. 458, 469, 493, 518.) Only the Chief Justice and Justices Wayne, Daniel, and Curtis, considered the point; but the last did not deem it a good answer to the plaintiff's suit. It is clear, therefore, that only four judges out of nine considered it as a question to be decided; and that only two of his associates agreed with the Chief Justice in his conclusion that a negro, under the circumstances stated in this plea, could not maintain an action in the courts of the United States. It may be added that Mr. Justice McLean declares that, if the question is to be deemed open, in his opinion a negro may be a citizen within the meaning of the Constitution. p. 531.

This being the case, we do not see how the court could remit the cause to the circuit court with instructions to dismiss it for want of jurisdiction; for we had supposed it to be the settled law of the supreme court, that the citizenship of the parties, if duly averred in the writ, could not be tried except on a plea to the jurisdiction. *Livingston* v. *Story*, 11 Peters, 393; *Sheppard* v. *Graves*, 14 Howard, 510. But the judgment of the court, as stated by the Chief Justice at the conclusion of his opinion, which undoubtedly corresponds with the mandate sent to the circuit court, and in which a majority of the judges must have concurred, is, "that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the circuit court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it. Its judgment for the defendant must consequently be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction." The only ground on which this judgment could have been arrived at is, that the question of jurisdiction is open at any stage of a cause in the courts of the United States, if appearing on the record; and that position is distinctly asserted by the Chief Justice on pages 427, 429, 430. The conclusion of the majority of the court therefore was, that, upon all the facts in the case, the plaintiff was a slave, and therefore not capable of suing as a citizen. How far those facts limit the point adjudged, we shall consider hereafter.

But as the general question of the citizenship of free negroes is of great interest and importance, and was discussed at length by some of the judges, it is worthy of a careful examination. The Chief Justice well states the question thus: "The words 'people of the United States' and 'citizens,' are synonymous terms, and mean the same

thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty?" p. 404.

This question is discussed principally in the opinions of the Chief Justice and Mr. Justice Curtis, and in order to understand it correctly, we must give an outline of their views. Both start with the admission, that, before the adoption of the federal Constitution, the power of naturalization was in the several States; and both assert, what is universally admitted, that the grant to congress of power to establish a uniform rule of naturalization, throughout the United States, applies only to aliens, that is, persons born out of the allegiance of the United States or of any State; and necessarily takes away from the States the right to make such persons citizens of the United States in the sense of the Constitution. But here their lines of argument diverge.

The Chief Justice is of opinion that a State may still confer the character and all the rights of a citizen "upon an alien, or any one it thinks proper, or upon any class or description of persons"; but that, as a State has no power of legislation beyond its own limits, such rights must be restricted to the State which gives them, and can confer no corresponding rights as a citizen of the United States; and that, as congress cannot confer these privileges except upon aliens, no class of persons, not aliens, can in any way be admitted to the rights of citizens of the United States, who were not citizens when the Constitution was adopted; that negroes at that time formed no part of the "people" of the several States, but were an inferior class of beings, possessing no rights entitled to protection.

Mr. Justice Curtis maintains, on the other hand, that the States have now no power to naturalize aliens, even to the limited extent of making them citizens of the State — the grant to congress comprehending the whole subject; but that the States retain full power to confer citizenship on any persons born on their soil, to the full extent of making them citizens of the United States; though he denies their

power to confer those rights on persons born in other States of the Union, who are not recognized as citizens in their native State. He then shows that, in several States, negroes, as part of the people, joined in the adoption of the federal Constitution, and have both before and since been recognized as citizens, and therefore contends that, in those States in which no law to the contrary is proved, they are to be deemed citizens, and may sue as such in the courts of the United States.

Let us test the soundness of these several positions. Citizenship, as we understand it, may be acquired in either of two ways — by birth; or by adoption, called, when applied to aliens, naturalization. After the Declaration of Independence, and before the adoption of the Constitution of the United States, the power of conferring citizenship, by naturalization or otherwise, like all other sovereign powers, was in the several States. And as the power vested in congress by that instrument applies to aliens only; and as all powers not delegated to congress by the Constitution, nor prohibited to the States, are expressly reserved to the States respectively, or to the people; the power of conferring citizenship, on all persons not aliens, necessarily remains in the several States, both as to persons born on their soil, and as to those born in other parts of the Union; and any person upon whom such rights are conferred becomes a citizen of the State conferring them.

And every citizen of a State is, *ipso facto*, a citizen of the United States. 2 Story on the Constitution, (2d ed.) § 1693. The preamble of the Constitution of the United States declares that it is established "by the people of the United States," that is, by the people of the States already confederated and known by that name. All admit that those who were citizens of the several States at that time became citizens of the United States; and no sound reason has been suggested why their successors should not acquire the same rights in the same way. The Constitution usually treats of citizens as belonging to the several States; for instance, in the clause concerning the judicial power of the United States, under which the question arose in this case; and in the provision that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. It refers exclusively to State laws to ascertain the qualifications of voters for officers of the United States; thus representatives in congress are to be chosen by those persons qualified to choose members of the most numerous branch of the State legislature, and presi-

dential electors in such manner as the State legislatures may appoint. The only instances, in which the Constitution speaks of "a citizen of the United States," are in fixing the qualifications of federal officers — representatives, senators, and president — where that expression is peculiarly appropriate.

With regard to the right of the States, since the adoption of the federal Constitution, to confer citizenship, we have a single remark to make upon the position of each of the two learned judges. The effect of the Chief Justice's doctrine that the States may make citizens who shall not be citizens of the United States, is, that members of congress, and even the president of the United States, may be chosen by persons not citizens of the United States. If, on the other hand, the power of the States be limited, as Mr. Justice Curtis suggests, to persons either born on their soil or citizens of other States, then no one, white or black, not recognized as a citizen in his native State, can ever become a citizen of any other State or of the United States; and this conclusion can hardly be correct without the additional limitation, that even a citizen of one State, who changes his permanent residence to another, loses all rights of citizenship; for the right of the State into which he comes to adopt him as a member, must depend upon the extent of its own power, and not upon his condition while subject to another sovereignty.

The position, that free negroes may sue in the courts of the United States, would seem to be sufficiently established by showing that they are now citizens of some of the States; and that they are so is admitted by the Chief Justice himself. But, for the purposes of this discussion, we are willing to rest their rights, in this respect, upon the proposition that they were a part of the people of the United States when the Constitution was adopted; and if they were admitted to be such in any part of the country at that time, the argument of the Chief Justice is fully answered. That they were so is as clear as any fact of history.

The State of Massachusetts, being one of the oldest, and at that time one of the most populous and important of the original thirteen, is chosen as an example by the Chief Justice. The Constitution of Massachusetts was formed during the Revolutionary War, and several years before that of the United States. It contains numerous passages which clearly show that it is intended for all inhabitants without exception — for all who were subjects of Great Britain. It uses the words "people," "citizens,"

"subjects," and "inhabitants," as entirely synonymous and convertible terms. This is sufficiently shown by the following articles of the Declaration of Rights, prefixed to that Constitution: "*All men* are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; and that of acquiring, possessing, and protecting property." "No *subject* shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience." "Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the *people;* and not for the profit, honor, or private interest of any one man, family, or class of men." "All the *inhabitants* of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected for public employments." "Every *subject* of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property or character." "In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the *citizen.*" And it may be truly said of each of these clauses, as was said by Chief Justice Shaw of that first cited: "That the description was broad enough in its terms to embrace negroes, and that it was intended by the framers of the Constitution to embrace them, is proved by the earliest contemporaneous construction, by an unbroken series of judicial decisions, and by a uniform practice from the adoption of the Constitution to the present time. The whole tenor of our policy, of our legislation and jurisprudence, from that time to the present, has been consistent with this construction, and with no other." *Commonwealth* v. *Aves*, 18 Pick. 210.

To meet these well authenticated facts, the only evidence which Chief Justice Taney produces to prove "the degraded condition of this unhappy race" in Massachusetts, and in support of his theory that they were no part of the people of that State, is the statute prohibition, which existed for more than a hundred years, of marriage between them and white persons — a prohibition founded on purely physiological grounds, and which no more shows the degraded condition of one race than of the other. A similar prohibition, and for similar reasons, applied and still applies to

grandmothers and aunts; yet these respected relatives are not without the pale of the Constitution. Well may Mr. Justice Curtis remark, as he does on page 574, "An argument from speculative premises, however well chosen, that the then state of opinion in the Commonwealth of Massachusetts was not consistent with the natural rights of people of color who were born on that soil, and that they were not by the Constitution of 1780 of that State admitted to the condition of citizens, would be received with surprise by the people of that State, who know their own political history."

When Chief Justice Taney, on page 415, in commenting on laws of New Hampshire, enacted in the present century, by which no one was permitted to be enrolled in the militia of the State but free white citizens, said that "nothing could more strongly mark the entire repudiation of the African race," he must for a moment have forgotten the paramount power over this subject given to congress by the Constitution, and the act of congress of 1792, (which he cites five pages later,) providing for the enrolment of only "every free ablebodied white male citizen." When he does cite that act, it is to argue from its terms that negroes were not accounted citizens by the congress of that day. To this position Mr. Justice Curtis's answer is complete: "An assumption that none but white persons are citizens would be as inconsistent with the just import of this language as that all citizens are ablebodied or males." And Mr. Justice Curtis further shows, on page 574, that free negroes were considered citizens in New Hampshire, and also in New Jersey, at the time of the adoption of the Constitution of the United States.

For a clear statement of the law of New York, as well as of the general doctrine on this subject, we cannot do better than quote from Chancellor Kent, "whose accuracy and research no one will question," as Chief Justice Taney well remarks, on page 416, in speaking of the very note from which the following passage is taken: "It is certain that the Constitution and statute law of New York, (Const. art. 2; N. Y. Revised Statutes, vol. i. p. 126, sec. 2,) speak of men of color as being *citizens*, and capable of being freeholders, and entitled to vote. And if, at common law, all human beings born within the ligeance of the king, and under the king's obedience, were natural born subjects, and not aliens, I do not perceive why this doctrine does not apply to these United States, in all cases in

which there is no express constitutional or statute declaration to the contrary. Blacks, whether born free or in bondage, if born under the jurisdiction and allegiance of the United States, are natives, and not aliens. They are what the common law terms natural born subjects. Subject and citizen are, in a degree, convertible terms, as applied to natives; and though the term *citizen* seems to be appropriate to republican freemen, yet we are, equally with the inhabitants of all other countries, *subjects*, for we are equally bound, by allegiance and subjection, to the government and law of the land. The privilege of voting, and the legal capacity for office, are not essential to the character of a citizen, for women are citizens without either; and free people of color may enjoy the one, and may acquire, and hold, and devise, and transmit, by hereditary descent, real and personal estates. The better opinion, I should think, was, that negroes or other slaves, born within and under the allegiance of the United States, are natural born subjects, but not citizens. *Citizens*, under our constitutions and laws, mean free inhabitants, born within the United States, or naturalized under the law of congress. If a slave born in the United States be manumitted, or otherwise lawfully discharged from bondage, or if a black man be born within the United States, and born free, he becomes thenceforward a citizen, but under such disabilities as the laws of the States respectively may deem it expedient to prescribe to free persons of color." 2 Kent Com. (6th ed.) 258, note *b*.

To the same effect is the opinion of the supreme court of North Carolina, as delivered by Mr. Justice Gaston, which we cite at some length, both for its great intrinsic merit, and to show that these views are not confined to any one section of the country: "According to the laws of this State, all human beings within it, who are not slaves, fall within one of two classes. Whatever distinctions may have existed in the Roman law between citizens and free inhabitants, they are unknown to our institutions. Before our Revolution, all persons born within the dominions of the king of Great Britain, whatever their color or complexion, were native-born British subjects; those born out of his allegiance were aliens. Slavery did not exist in England, but it did exist in the British colonies. Slaves were not, in legal parlance, persons, but property. The moment the incapacity or disqualification of slavery was removed, they became persons, and were then either British subjects or not British subjects, accordingly as they were or were not

born within the allegiance of the British king. Upon the Revolution, no other change took place in the law of North Carolina than was consequent upon the transition from a colony dependent upon a European king to a free and sovereign State; slaves remained slaves; British subjects in North Carolina became North Carolina freemen; foreigners, until made members of the State, continued aliens; slaves manumitted here became freemen, and therefore, if born within North Carolina, are citizens of North Carolina; and all free persons, born within the State, are born citizens of the State." "It has been said that by the Constitution of the United States, the power of naturalization has been conferred exclusively upon congress, and therefore it cannot be competent for any State, by its municipal regulations, to make a citizen. But what is naturalization? It is the removal of the disabilities of alienage. Emancipation is the removal of the incapacity of slavery. The latter depends wholly upon the internal regulations of the State; the former belongs to the government of the United States. It would be a dangerous mistake to confound them." *State* v. *Manuel*, 4 Dev. & Bat. 24, 25. And this was again recognized as the settled law of that State, in *State* v. *Newsom*, 5 Iredell, 253.

It is not strange that Mr. Justice Catron abstained from concurring in the opinion of Chief Justice Taney upon this point; for he must have remembered these decisions of his native State, as well as his own opinion when presiding over the supreme court of Tennessee, in which he said: "The idea that a will emancipating slaves, or deed of manumission, is void in this State, is ill founded. It is binding on the representatives of the devisor in the one case, and the grantor in the other, and communicates a right to the slave; but it is an imperfect right, until the State, the community of which such emancipated person is to become a member, assents to the contract between the master and slave. It is adopting into the body politic a new member — a vastly important measure in every community, and especially in ours, where the majority of freemen over twenty-one years of age govern the balance of the people, together with themselves; where the free negro's vote at the polls is of as high value as that of any man." "It is an act of sovereignty, just as much as naturalizing the foreign subject. The highest act of sovereignty a government can perform, is to adopt a new member with all the privileges and duties of citizenship." *Fisher's Negroes* v. *Dabbs*, 6 Yerger, 126, 127.

We have thus shown that in many of the States, at and since the time of the adoption of the federal Constitution, free negroes have not only been recognized as citizens, but allowed to exercise one of the highest privileges of citizenship, that of voting. But this privilege is by no means necessary to citizenship, as is now generally conceded, and is well stated by the Chief Justice, on page 422: "Undoubtedly a person may be a citizen, that is, a member of the community who form the sovereignty, although he exercises no share in the political power, and is incapacitated from holding particular offices. Women and minors who form part of the political family cannot vote; and where a property qualification is required to vote, or hold a particular office, those who have not the necessary qualification cannot vote, or hold the office; yet they are citizens." As most, if not all, of those decisions which deny the title of citizen to free negroes, are founded upon the assumption that the right to vote is necessary to citizenship; and as those decisions prove, at most, only that negroes cannot be citizens in the States whose courts deny them that character; we do not consider it necessary more particularly to examine them.

No candid man can read the acts of congress without being convinced that the laws of the United States acknowledge no qualification of color or race, as essential to the citizenship of native-born inhabitants. The very unanimity of opinion on this point accounts for the fact that citizenship is nowhere defined. Instances are not wanting, however, in which the fact that negroes may be citizens is expressed with a distinctness that cannot be misunderstood. Thus the act of congress of February 28, 1803, imposed a penalty on any one who should import, into any State which had prohibited or should prohibit the slave trade, "any negro, mulatto, or other person of color, not being a native, a citizen, or a registered seaman of the United States," &c.; and as the act of 1796 did not authorize any but citizens of the United States to be registered as seamen, the act of 1803 twice recognizes negroes as citizens. This act bears the signature of Thomas Jefferson, the writer of the Declaration of Independence, and is of itself a sufficient answer to the assertion of the Chief Justice, that "the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people,

nor intended to be included in the general words used in that memorable instrument." p. 407.

Free negroes have also been admitted as citizens by every treaty, by which the United States have acquired a Territory from a foreign nation. Thus the treaty with France of 1803, by which that Territory was obtained, part of which now forms the State of Missouri, provides that "the *inhabitants* of the ceded Territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States." The treaty with Spain for the purchase of Florida, contains the like words, under which the supreme court of Alabama have held that a free negro was entitled to the rights of a citizen of the United States. *Tannis* v. *Doe*, 21 Alab. 454. Perhaps the silence of Mr. Justice Campbell on this point may have been occasioned in part by the decision of the supreme court of his own State. The treaty with Mexico of 1848, contained a similar clause, using the words "citizens" instead of "inhabitants;" and the supreme court of the United States, within two years past, unanimously declared, in a case where the title of land depended upon the point, that "all the inhabitants, without distinction, whether Europeans, Africans, or Indians, were citizens" of Mexico. *United States* v. *Ritchie*, 17 Howard, 525.

The authorities therefore clearly show that free negroes, born in the United States, are to be presumed citizens in all those States in which no law to the contrary is proved. No statute or decision of the State of Missouri, as to the extent of the rights allowed to free negroes in that State, is referred to in the opinion of any of the judges. We have had no opportunity to make a thorough examination of the statutes of Missouri, but some of them in so many terms recognize the fact that there may be free negroes who are citizens of the United States. Revised Statutes of Missouri, c. 123, § 9.

The three judges, who now think that free negroes cannot be citizens, seem to have been much influenced by the consideration, that, if citizens, they might, under the clause giving to citizens of each State all privileges and immunities of citizens in the several States, claim rights which might be dangerous to the peace and safety of States where slavery is recognized. We are inclined to think that clause secures to citizens of one State in another, those privileges and immunities only which would there be allowed to citizens

of the same class or description under like circumstances. But precisely what rights are guarantied by this clause, or how it is to be enforced, has never been judicially determined, nor has its practical construction been uniform; it is therefore a very unsafe guide in interpreting the much clearer clause of the Constitution, under which this question arose, the evident intention of which is to require of a suitor no qualification but residence in a different State or country from the party sued.

The object of this provision, as declared by the supreme court, was, "to have a tribunal in each State, presumed to be free from local influence, and to which all who were non-residents or aliens might resort for legal redress." *Gordon* v. *Longest*, 16 Peters, 104. But if the novel doctrine under consideration be true, a person of color, kidnapped or unlawfully imprisoned at the South, would be without redress, except in the State courts; as on the other hand, the only remedy of a citizen of a Southern State against a colored person at the North, for a debt or personal injury, would be in the courts of a Northern State. And thus this wise provision of the Constitution would fail to reach those very cases in which an impartial administration of justice would most require its application.

But the Chief Justice's construction of the Constitution, if taken to be as he repeatedly states it, is not limited in its consequences to the rights of individuals, but seriously affects the political power of the States. For, after speaking of two clauses in the Constitution, which "point directly and specifically to the negro race as a separate class of persons," and then of the Constitution as reserving to the States the right to import slaves until 1808, and as pledging the States to deliver up fugitive slaves to their masters, he says: "These two provisions show, conclusively, that neither the description of persons therein referred to, nor their descendants, were embraced in any of the other provisions of the Constitution." p. 411. And again: "The only two provisions, which point to them and include them, treat them as property." p. 425. What then becomes of that clause of the Constitution which directs that "representatives shall be apportioned among the several States according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons"? We all know that this clause was thus framed with the very object of allowing the slaveholding

States a partial representation for their slaves, and that such has been the practical construction for nearly seventy years; but if even free negroes are not to be counted as persons, this practice must be abandoned.

The Chief Justice evidently does not mean to be misunderstood in this matter, for, in speaking of the condition of the African race in this country at the time of the Declaration of Independence, and of the framing and adoption of the Constitution of the United States, he tells us: "They had for more than a century before been regarded as beings of an inferior order; and so far inferior, that they had no rights which the white man was bound to respect;" and "were never thought of or spoken of except as property." pp. 407, 410. But the Constitution of the United States uniformly speaks of them, even when enslaved, as "persons" — "persons" in determining the apportionment of representatives and direct taxes among the several States — "persons," the migration or importation of whom should not be prohibited by congress before 1808 — "persons," still, who, if they escape from service or labor, shall be delivered up. That Constitution further provides: "No *person* shall be deprived of life, liberty, or property, without due process of law." The substance of this provision had been familiar to the people of this country and their English ancestors for many centuries. The great English charter declared: "*Nullus liber homo capiatur, vel imprisonetur, aut disseisetur de libero tenemento suo, vel libertatibus, vel liberis consuetudinibus suis, aut utlagetur, aut exuletur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terrae. Nulli vendemus, nulli negabimus, aut differemus, rectum vel justitiam.*" On which Lord Coke remarks: "*Nullus liber, &c.* This extends to villeins, saving against their lord, for they are free against all men, saving against their lord," 2 Inst. 45; and, in support of this, refers to Littleton, section 189, where it is said: "Every villein is able and free to sue all manner of actions against every person, except against his lord, to whom he is villein. And yet in certain things he may have against his lord an action," of which many examples are then given, the most remarkable of which is in section 193: "Also, if a villein sueth an action of trespass, or any other action, against his lord in one county; and the lord saith that he shall not be answered, because he is his villein regardant to his manor in another county; and the plaintiff saith that he is free, and of a free estate, and not a villein; this shall be tried in the county where the plaintiff hath conceived his

action, and not in the county where the manor is; and this is in favor of liberty." To which Lord Coke adds, quoting from Chief Justice Fortescue: "*Impius et crudelis judicandus est, qui libertati non favet. Angliæ jura in omni casu libertati dant favorem.*" Co. Lit. 124 *b.* If Chief Justice Taney's construction of the Constitution be sound, liberty has not gained much in six hundred years, notwithstanding the extension of the rights of a "*liber homo*" to all "persons."

II. Having disposed of the plea in abatement, we come to the questions raised by the statement of facts. But let us turn aside, for a moment, to consider an important point of practice. The course of the Chief Justice and of those of his associates who agreed with him in holding that the decision of the first plea disposed of the cause, but who, notwithstanding, proceeded to consider the case on its merits, was so severely criticized by the dissenting judges, that the Chief Justice and Mr. Justice Wayne, in their opinions as now printed, (pp. 427, 455,) reply quite elaborately to these comments, which officially appear to have been the last opinions delivered. The Chief Justice says, in substance, that it is the practice of every appellate court to correct all errors which appear on the record; and makes the further assertion, in which he is supported by Mr. Justice Wayne, that the cases in which the supreme court of the United States has refused to do so, after deciding against the jurisdiction, were cases which came up from the State courts, and in which, therefore, the question was, whether the supreme court itself had jurisdiction, and, if that question were decided in the negative, no right could remain to consider the other questions presented by the record; but that, as this case came from an inferior court of the United States, it was the duty of the supreme court to set that court right on all points presented on the record and argued by counsel. Although the Chief Justice, on page 429, asserts this to be the "daily practice of this court," and Mr. Justice Wayne, on page 455, says that "the cases cited by the Chief Justice," on this point, "speak for themselves," no cases are cited by the Chief Justice; and it may be safely affirmed that it is not usual for any appellate court to express an opinion on other points, after deciding a question which finally disposes of the case, unless to save further litigation between the parties in courts of the same jurisdiction. But here future litigation in courts of the same jurisdiction was impossible, for if the plea in abatement were good, these further questions could

not arise in the federal courts within any State, between these parties, nor indeed in any suit to which a descendant of negro slaves was a party. And this disposes of the alleged distinction between writs of error to State and to federal courts; for since the effect of the decision is that the State courts are the only tribunals which can try this case, the same reason holds for refusing to discuss the other questions, as if the case had been brought directly from a State court. But as the question raised by the plea in abatement now turns out not to have been decided, we are necessarily brought to consider the facts on which judgment was rendered against the plaintiff in the court below, which we will briefly recapitulate:

The plaintiff, being a slave in Missouri, was taken by his master to a military post in the State of Illinois, and there held as a slave for two years; thence taken to a military post in Territory where slavery was prohibited by the act of congress, known as the Missouri Compromise Act, and there held as a slave for two years; and thence carried back into the State of Missouri, where the supreme court of that State held him to be still a slave. The question of most interest, argued upon these facts, is whether that part of the Missouri Compromise Act is constitutional, which prohibits slavery in the Territory of the United States lying north of 36° 30′ north latitude. It has been supposed that if the supreme court did not decide the question of the citizenship of negroes, they did decide against the validity of this prohibition. It is true that six of the judges expressed their opinions that it was unconstitutional and void; but it is easy to show that the point was not judicially determined.

The court, as we have shown, undoubtedly did decide that the plaintiff was a slave when this suit was brought; and in order to arrive at this conclusion, they must have held, either that he never became entitled to his freedom, or that, having acquired such a right, he lost it by his return to Missouri. But in order to determine the case upon the first ground, it must have been held, not only that the plaintiff did not become entitled to freedom in the Territory, but also that he could not have asserted such a right in Illinois — a position which most of the judges do not even suggest. On the contrary, the decision, so far as the residence in Illinois is concerned, is put distinctly upon the ground, that the laws of Illinois could not operate on the plaintiff after his return to Missouri. This decision disposes equally of his

residence in the Territory, for his stay in each place was for an equal time, and for similar purposes. The whole case being thus disposed of, the opinion on the Missouri Compromise Act was clearly extrajudicial.

A fuller demonstration of this, if desired, will be found in the opinions of the judges. The Chief Justice, on page 452, says: "As Scott was a slave when taken into the State of Illinois by his owner, and was held as such, and brought back in that character, his *status*, as free or slave, depended on the law of Missouri, and not of Illinois." With equal force he might have said: "As Scott was a slave when taken into the Territory of the United States by his owner, and was there held as such, and brought back in that character, his *status*, as free or slave, depended on the law of Missouri, and not on the act of congress." Mr. Justice Nelson, "conceding, for the purposes of the argument, that this provision of the act of congress is valid within the Territory for which it was enacted," holds "that the question involved is one depending solely upon the law of Missouri." p. 465. Mr. Justice Campbell says that "the claim of the plaintiff to freedom depends upon the effect to be given to his absence from Missouri, in company with his master, in Illinois and Minnesota, and this effect is to be ascertained by a reference to the laws of Missouri." p. 493. Mr. Justice Wayne concurs with the Chief Justice, and Justices Grier and Catron concur with Mr. Justice Nelson. pp. 454, 464, 519. These are all the judges, but one, who concur in the judgment of the court; and we thus see that four of them expressly say that the whole case is to be determined by the law of Missouri; and that the other two substantially assert the same thing, by saying that the law of Missouri disposes of any right alleged to be derived from the residence in Illinois. It is clear, therefore, that by the established doctrine of the supreme court of the United States, which we have already stated, the opinions expressed upon the validity of the Missouri Compromise Act, not being necessary to the decision, would not be regarded by that court as of any judicial authority if the question should come before them again. And Mr. Justice McLean is justified in his somewhat indignant protest: "In this case, a majority of the court have said that a slave may be taken by his master into a Territory of the United States, the same as a horse, or any other kind of property. It is true this was said by the court, as also many other things which are of no authority." "I shall certainly not regard it as such." pp. 549, 550.

There being no judicial decision of this point, the individual opinions of the judges are severally entitled to the weight due to the intrinsic strength of reasoning of each, and to the legal eminence of a Taney, a Campbell, a Grier, a Catron, a Wayne, or a Daniel. Without derogating from the respect due to the high office of the learned judges, we shall endeavor to show that the weight of argument and authority clearly preponderates against their conclusion. And we shall derive much assistance in this attempt, from the opinions previously expressed by themselves and their predecessors, as well as from the practical construction of the powers of congress, as acted on by the other departments of the government, from the adoption of the Constitution to the present time.

In order to understand this question, it will be necessary to give a brief historical sketch of the manner in which the United States have acquired and held those extensive domains which have always been known as the Territories of the United States. At the close of the Revolutionary War, there remained within the limits of the United States, and west of the old thirteen States, large tracts of unsettled lands. These lands had been the subject of much anxiety and discussion; the claims of several of the States to portions of them were conflicting, on the one hand; and on the other, it was urged, in behalf of the general government, that they ought to be considered as common property, conquered from the Crown of Great Britain by the efforts of all the States, and should be under the control of congress, to be applied as a common fund to the extinguishment of the war debt, and to be prepared for settlement and subsequent admission into the Union, as States. These last opinions, adopted by many of the most patriotic and influential men of the time, were beginning to prevail, and had before 1787 led to cessions by the States of New York, Virginia, Massachusetts, Connecticut, and South Carolina. In that year the congress of the Confederation provided for the government of the principal part of the lands thus ceded, by the celebrated "Ordinance for the government of the Territory of the United States northwest of the river Ohio." This act, besides providing for a government of the Territory, complete in all departments, executive, legislative, and judicial, and establishing rules for the descent, distribution, and conveyance of property, contains six fundamental articles, providing for the eventual division of the Territory into distinct republican States, to be admitted "into the con

gress of the United States on an equal footing with the original States in all respects whatever," and also including a number of provisions, in the nature of a Bill of Rights, among which are the following: "No man shall be deprived of his liberty or property but by the judgment of his peers or the law of the land." "There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted; provided always that any person escaping into the same from whom service or labor is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor as aforesaid." The power of the congress of the Confederation to pass this ordinance, and to provide for the admission of new States into the confederacy, having been doubted, the following clauses wese introduced into the Constitution:

"New States may be admitted by the congress into this Union, but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned as well as of the congress."

"The congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice the claims of the United States or of any particular State."

The first congress of the United States, under the Constitution, at its first session, passed an act, the express purpose of which, as declared in the preamble, was that the Ordinance of 1787 should continue to have full effect. At the second session of this congress, a grant from North Carolina of lands south of the Ohio was accepted, and an act was passed for the government of the ceded Territory. Similar acts were soon afterwards passed for the government of the Mississippi Territory, in which the State of Georgia claimed rights which were afterwards compromised. Upon the acquisition of the Louisiana Territory by treaty from France in 1803, of the Florida Territory from Spain in 1819, and of New Mexico from Mexico in 1848, congress passed similar acts organizing territorial governments over these countries, and has ever since continued to govern them in the same manner, until their admission into the Union as States.

Whence is the power derived, which has been so repeat-

edly exercised by congress? It has usually been found in that clause of the Constitution which we have just cited, granting power to congress "to make all needful rules and regulations respecting the Territory or other property belonging to the United States." Taking these words in their literal sense only, there would seem to be no doubt of their meaning. Sir William Blackstone, whose commentaries were at least as familiar to the framers of the Constitution, as they have been to all statesmen and lawyers since their time, says that "municipal or civil law is the *rule* by which particular districts, communities, or nations are governed." 1 Bl. Com. 44. And the word "regulation" is frequently used in the Constitution in a similar sense. Thus no fugitive slave is to be discharged from service by reason of "any law or regulation" in the State to which he escapes. Another familiar instance is the power given to congress to "regulate commerce," of which Chief Justice Marshall said: "It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution." "If, as has always been understood, the sovereignty of congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in congress as absolutely as it would be in a single government, having in its Constitution the same restrictions upon the exercise of the power as are found in the Constitution of the United States." *Gibbons* v. *Ogden*, 9 Wheaton, 196, 197.

All the text writers of authority agree in this view of the clause cited. Thus Chancellor Kent says: "With respect to the vast Territories belonging to the United States, congress have assumed to exercise over them supreme powers of sovereignty. Exclusive and unlimited power of legislation is given to congress by the Constitution, and sanctioned by judicial decisions." 1 Kent Com. 383. And Judge Story holds similar language: "No one has ever doubted the authority of congress to erect territorial governments within the Territory of the United States, under the general language of the clause, 'to make all needful rules and regulations.' Indeed, with the Ordinance of 1787 in the very view of the framers, as well as of the people of the States, it is impossible to doubt that such a power was

eemed indispensable to the purposes of the cessions made by the States." 2 Story on the Constitution, § 1325.

In no previous case in the courts has it been even suggested that the power of congress to govern the Territories was limited in any respect except by the express provisions of the Constitution. The first opinion expressed on this point, is in *Serè* v. *Pitot*, 6 Cranch, 336, decided in 1810, in which Chief Justice Marshall said: "The power of governing and of legislating for a territory is the inevitable consequence of the right to acquire and to hold territory. Could this position be contested, the Constitution of the United States declares that 'congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.' Accordingly, we find congress possessing and exercising the absolute and undisputed power of governing and legislating for the Territory of Orleans. Congress has given them a legislature, an executive, and a judiciary, with such powers as it has been their will to assign to those departments respectively." Again, in *M'Culloch* v. *State of Maryland*, 4 Wheaton, 422, decided in 1819, the same great judge, after referring to this clause as the source of the power of congress, speaks of the "universal acquiescence in the construction which has been uniformly put" on this clause; and says: "All admit the constitutionality of a territorial government."

The first case decided by the Supreme Court of the United States, in which any question upon the construction of this clause was directly in issue, and by far the most important case upon this subject, is that of *American Insurance Company* v. *Canter*, 1 Peters, 511, decided in 1828, in which Chief Justice Marshall, speaking of the condition of Florida between the times of its acquisition by treaty, and its becoming a State, said: "In the meantime Florida continues to be a Territory of the United States, governed by virtue of that clause in the Constitution, which empowers congress 'to make all needful rules and regulations respecting the Territory and other property belonging to the United States.' Perhaps the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the facts, that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern, may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power may

be derived, the possession of it is unquestioned." 1 Peters, 542, 543. And the court accordingly held that the power of congress was so general, that it might establish a local legislature in the Territory, with power to create a territorial judiciary; and that a judiciary so established might exercise jurisdiction over subjects intrusted by the Constitution to courts of the United States exclusively, although such territorial judges were appointed for a term of years only, while the Constitution requires that the judges of all the courts of the United States shall hold office during good behavior. The result, that the constitutional safeguards of the independence of the judiciary did not extend to the Territories, was reached by holding that congress possessed unlimited power to establish a government over the Territories, complete in all its departments, and organized in any way that congress in its discretion might think fit; and could not have been arrived at by any other course of reasoning.

Mr. Justice Thompson, in 1840, when delivering an opinion of the court, after referring to the power of congress to rule and regulate the Territories, and citing from the case just stated, says that "this power is vested in congress without limitation, and has been considered the foundation on which the territorial governments rest." *United States* v. *Gratiot*, 14 Peters, 537. And in 1854, Mr. Justice Wayne, in delivering the unanimous opinion of all the judges who took part in the decision of the case of Dred Scott, to the point that duties could be lawfully exacted on imports into California, after the treaty of peace with Mexico, by a collector appointed by the military governor of that Territory, said: "The Territory had been ceded as a conquest, and was to be preserved and governed as such until the sovereignty to which it had passed had legislated for it. That sovereignty was the United States under the Constitution, by which power had been given to congress to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States, with the power also to admit new States into this Union, with only such limitations as are expressed in the section in which this power is given." The learned judge further stated that the right inference from the failure of congress at once to put an end to the military government was, that it was intended to be continued until changed by congress; and in confirmation of the views he had expressed, quoted the passage which we have given from the case in 1 Peters, and referred to the case in 14

Peters, as repeating and reaffirming what had been there decided. *Cross* v. *Harrison*, 16 Howard, 193, 194.

The opinions of the judges who maintain that congress had no power to prohibit slavery in the Louisiana Territory, are founded upon positions so various, and sometimes even contradictory, that we must examine them separately. It is difficult to account for the comparative silence of a judge of the vigor of mind and uncommon independence of Mr. Justice Grier — remarkable, even above his brethren, for expressing his own opinion, whether of concurrence or dissent, but who in this case contents himself with simply concurring with the Chief Justice — excepting upon the supposition that his own mind was not entirely convinced, but that he was willing to yield on this question to the opinion of the majority of his brethren.

Of the opinions expressed, the first in logical order, because most restrictive of the power of congress, is that of Mr. Justice Campbell. This opinion presents, in a subtle and ingenious manner, the view of an able lawyer and statesman of what may be called the extreme Southern school; and so long as he remains upon the bench of the supreme court, there will be no danger that the views of the strongest advocates of State rights will be overruled without full discussion. A very good illustration of the limited, not to say narrow, construction which this school gives to the Constitution, is found in this opinion. Mr. Justice Campbell thinks that the Territory spoken of in the Constitution is simply the land, belonging to the United States, and that the power to establish rules and regulations is purely incidental, and "is restricted to such administrative and conservatory acts as are needful for the preservation of the public domain and its preparation for sale or disposition." p. 514. His principal argument in support of this view is, that the men, who resisted with arms the assertion by Great Britain of an unlimited power of legislation over the colonies, could not have intended to grant a similar power to the federal government over the inhabitants of the Territories; and therefore the words used should receive the strictest construction. He asserts, what is indeed the necessary consequence of his doctrine, that the people of the Territory, when sufficiently numerous, must govern themselves, and adds that how much municipal power they may exercise cannot be determined by the courts of justice, but must depend on political considerations.

It is a sufficient answer to this argument, which is advanced by no other one of the judges, that it is in direct

conflict with all judicial and legislative precedent, as appears from the summary which we have already given. And Mr. Justice Campbell himself refutes his own argument by admitting that congress may perhaps have the power of selecting "suitable laws for the protection of the settlers, until there may be a sufficient number of them to form a self-sustaining municipal government," and that "to mark the bounds for the jurisdiction of the government of the United States within the Territory, and of its power in respect to persons and things within the municipal subdivisions it has created, is a work of delicacy and difficulty, and, in a great measure, is beyond the cognizance of the judiciary department of that government." p. 514.

The Chief Justice argues that "the Territory" of the United States means only the Northwest Territory, a frame of government for which had already been provided by the Ordinance of 1787, but which might need some additional "rules and regulations" to adapt it to the new order of things; and that the use of the words "territory and other property" shows that it was not intended to grant a general power of legislation over future acquisitions, but points to a specific and definite subject, namely, the Territory then belonging to the United States. The purpose of this argument, as stated by himself, on page 442, is to escape from the effect of the act of the first congress, confirming the Ordinance of 1787, which prohibited slavery in similar terms to those of the Missouri Compromise Act, and of the numerous decisions of the State courts upholding and enforcing that prohibition. But this construction ignores the fact, that, at the time of the adoption of the Constitution, cessions were expected of other Territories, which were afterwards received and governed; and does not dispose of the decisions which we have cited, for they all concerned Territory acquired since the adoption of the Constitution. And the remark of Mr. Justice McLean is, of itself, a complete answer: "The Constitution was formed for our whole country. The expansion or contraction of our Territory required no change in the fundamental law." p. 544.

Indeed this position of the Chief Justice becomes immaterial, by his admission on page 443, that congress possesses the general power of legislation over the Territories; and although he prefers to derive this power by necessary implication from the power to acquire Territory by conquest or treaty, rather than from the express grant in the Constitution, he gives no reason why the power arising by impli-

cation should be more restricted than if it had been expressly granted.

Mr. Justice Catron expressly admits the general power of congress, saying: "More than sixty years have passed away since congress has exercised power to govern the Territories, by its legislation directly, or by territorial charters subject to repeal at all times; and it is now too late to call that power into question, if this court could disregard its own decisions, which it cannot do, as I think." "It is asking much of a judge who has for nearly twenty years been exercising jurisdiction from the Western Missouri line to the Rocky Mountains, and, on this understanding of the Constitution, inflicting the extreme penalty of death for crimes committed where the direct legislation of congress was the only rule, to argue that he had all the while been acting in mistake and as an usurper." p. 523. But he has a view peculiar to himself in respect to this particular Territory, namely, that a prohibition of slavery there is contrary to the treaty of 1803, which, after providing, in the clause we have already quoted, for the admission of the inhabitants into the Union as citizens, stipulates that "in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess." To this there are many answers. First, It does not restrain congress from prohibiting the admission of a particular kind of property, for reasons of public policy, into one part of the Territory. Secondly, This provision addresses itself to congress exclusively; for a contract, made by the political department of the government with a foreign nation, can be enforced only by the nation with which it is made, and not by the judiciary department of the government which makes the contract. *Foster* v. *Neilson*, 2 Peters, 253; *Garcia* v. *Lee*, 12 Peters, 511; *Taylor* v. *Morton*, 2 Curtis, C. C. 454. Thirdly, The treaty protected the property of the inhabitants only until their admission into the Union, and all who were slaveholding inhabitants of the Territory at that time have since been so admitted in the States of Louisiana, Arkansas, and Missouri; and thereby this stipulation ceased to have any effect. *New Orleans* v. *De Armas*, 9 Peters, 235. And if there were any inhabitants not so admitted, the act, even if inoperative against them, would be valid as to all other persons.

Nearly all the judges who think that congress has no power to prohibit slavery in the Territories rely, more or less distinctly, upon an argument brought forward by Mr.

Calhoun in 1847, when this doctrine was first broached, which is to this effect: That the Territories are acquired by the common blood and treasure, and are to be held for the common benefit of the whole people of the United States, and that any measure which gives an advantage in the use of this property to one class or section is a breach of trust by congress, and therefore void. It is undoubtedly true that congress is a trustee for the whole people; but, in the words of Mr. Justice Curtis: "The Territory was acquired for them in their collective, not their individual capacities. It was acquired for their benefit as an organized political society, subsisting as 'the people of the United States,' under the Constitution of the United States; to be administered justly and impartially, and as nearly as possible for the benefit of every individual citizen, according to the best judgment and discretion of the congress; to whose power, as the legislature of the nation which acquired it, the people of the United States have committed its administration." p. 626. And the courts have no power to revise the action of congress on this matter, if it should be thought unjust. The establishment or prohibition of slavery is a question of policy, involving many considerations, but all of a strictly political nature. Even Mr. Calhoun evidently did not consider that such a prohibition would be strictly, and in its legal sense, unconstitutional; for not only had he approved the Compromise Act as one of the members of President Monroe's Cabinet, and voted for acts of a similar nature; but after his resolutions had been presented, he and his friends voted to extend the compromise line to the Pacific Ocean in 1848, and again for the act of 1850 establishing a territorial government for New Mexico, which reaffirmed the prohibition of slavery in Texas north of that line. The power to prohibit slavery is one of the ordinary powers of legislation, which has been exercised in all those States which are now free, and also by congress from the foundation of the government. The Ordinance of 1787, which all the judges, with the exception of Mr. Justice Daniel, consider to have been valid after it was re-enacted by the first Congress, prohibited it. So did the several acts for the government of the Territories of Indiana, Illinois, Michigan, Wisconsin, Iowa, and Oregon, and the act for the admission of Texas. Yet all these Territories were acquired by the common efforts and held for the common good; and the cessions by Virginia and the other States expressly recognize and are founded upon this fact.

But the most novel and startling argument of all is, that

the prohibition of slavery in a Territory of the United States is a violation of the provision of the Constitution, that "No person shall be deprived of life, liberty, or property without due process of law." There is at least as much ground to say that this clause prohibits slavery in all the Territories of the United States. If the construction suggested be sound, the words have been misunderstood for ages. They are contained in every written Constitution with which we are acquainted; borrowed from *Magna Charta*, they have been inserted in the Constitution of every State of the Union, as well those which prohibit, as those which allow slavery; they are found in the Ordinance of 1787, side by side with the clause by which slavery is prohibited. If this new doctrine be true, emancipation by operation of law without the consent of the master is impossible; all the decisions by which slaves brought from one State into another have been held to become free, under any circumstances, are founded in error; and the Supreme Court of the United States, in 1844, unconstitutionally deprived a slaveholder of his property, by declaring that a slave carried from one part of the District of Columbia into another became free by the operation of the laws of Maryland continued in force by act of congress. *Rhodes* v. *Bell*, 2 Howard, 397. That case is also a judicial refutation of Mr. Calhoun's doctrine; for it cannot be pretended that the citizens of any part of the United States are entitled to greater rights in a distant Territory, than in the District of Columbia, the seat of the national government.

III. The notion entertained by many persons, that it was decided in the case of Dred Scott, that a slave may be taken by his master into a State where slavery is prohibited by law, and yet not be entitled to claim his freedom there, is not justified by the positions announced by any judge as the ground of his opinion; though we fear it may be a fair inference, if not an unavoidable consequence, of the assumption that the Constitution guaranties the right to take slaves wherever the master may please, within the Territory of the United States.

But on this point the law of England, as well as of this and all other civilized countries, is too well settled to require an accumulation of authorities. Most of them are collected by Mr. Justice Story, in section 96 of his Treatise on the Conflict of Laws, where he says: "There is a uniformity of opinion among foreign jurists, and foreign tribunals, in giving no effect to the state of slavery of a party, whatever it

might have been in the country of his birth, or of that in which he had been previously domiciled, unless it is also recognized by the laws of the country of his actual domicil, and where he is found, and it is sought to be enforced. In Scotland the like doctrine has been solemnly adjudged. The tribunals of France have adopted the same rule, even in relation to slaves coming from and belonging to their own colonies. This is also the undisputed law of England. It has been solemnly decided that the law of England abhors, and will not endure the existence of slavery within the nation; and consequently, as soon as a slave lands in England, he becomes *ipso facto* a freeman, and discharged from the state of servitude. Independent of the provisions of the Constitution of the United States, for the protection of masters in regard to domestic fugitive slaves, there is no doubt that the same principle pervades the common law of the non-slaveholding states in America; that is to say, foreign slaves would no longer be deemed such after their removal thither."

That no particular purpose or length of residence of the master in the free country is requisite to give the slave the right to claim his freedom there, is established by the leading case of *Sommersett*, decided by the court of King's Bench in 1772; for the return to the writ of *habeas corpus* in that case showed that the master came with his slave from Virginia to England, merely for the purpose of transacting certain business, and with the intention of returning as soon as he had finished it; and that the respondent, who was captain of a vessel lying in the Thames, and bound for Jamaica, held Sommersett under directions from his master to take him to Jamaica, and there sell him as a slave. And the court held that the slave was entitled to be discharged, Lord Mansfield saying, "The state of slavery is so odious, that nothing can be suffered to support it, but positive law." 20 Howell's State Trials, 82; Lofft, 19. And the same doctrine had been declared in even stronger terms in the court of chancery ten years earlier, on a bill in equity, filed by an administrator, to recover back a sum of money presented by his intestate on a death-bed to a negro who had been brought to England as a slave. The suit was apparently founded on the supposition that the negro was still a slave, and therefore incapable of receiving a gift. But Lord Chancellor Northington delivered the following opinion: "As soon as a man sets foot on English ground, he is free; a negro may maintain an action against his master

for ill usage, and may have a *habeas corpus*, if restrained of his liberty. Bill dismissed, with costs." *Shanley* v. *Harvey*, 2 Eden, 126. Even Lord Stowell, who thought that a slave, by returning to a colony where slavery legally existed, resumed in all respects the condition of slavery, (a theory which we shall be obliged to examine presently,) expressly admits the law to be well settled "that slaves coming into England are free there, and that they cannot be sent out of the country by any process to be there executed." *The Slave Grace*, 2 Hagg. Adm. 118. So that the English courts of common law, equity, and admiralty, all concur in opinion to this extent.

The same doctrine has been affirmed by the supreme court of the United States. "The state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of the territorial laws. This was fully recognized in Sommersett's case, which was decided before the American Revolution." *Prigg* v. *Commonwealth of Pennsylvania*, 16 Peters, 611, 612.

Like decisions have been made in every free State in which the question has arisen. And the same rule has been often recognized by the courts of slave States, but as the question necessarily arose before them after the slave's return, they will be considered more appropriately under our next head. The only instance, known to us, in which the courts of a State where slavery is prohibited by law have recognized the right of a master, under any circumstances, to restrain his slave of his liberty in that State, is the decision of the supreme court of Illinois in *Willard* v. *People*, 4 Scam. 461, and that was the case of a mere passage through Illinois from the slave State of Kentucky on the one side to the slave State of Missouri on the other. A contrary decision was made by Judge Paine of the superior court of New York, in *People* v. *Lemmon*, 5 Sandf. 681; and in the case of *Commonwealth* v. *Fitzgerald*, 7 Law Reporter, 379, Chief Justice Shaw discharged a slave in attendance upon his master, an officer in the navy of the United States, upon the vessel's coming, by order of a superior officer, into a port of Massachusetts. But a consideration of the question of the right of mere transit is not within the scope of this article; for, whether Dred Scott acquired a technical domicil or not, either in Illinois or in the Territory, the facts agreed show that he had an actual residence in each place for two years.

IV. Taking it then to be undisputed and indisputable that a slave taken by his master into a free State, and

residing there, either temporarily or permanently, is entitled to claim his freedom there, we come to a question upon which there is a greater conflict of authority, namely, what is the *status* or condition of a slave who does not avail himself of that right, but returns with his master to a slave State. This question, as it seems to us, may be most satisfactorily solved by the application of a few elementary principles.

The following maxims are to be found in the Institutes of Justinian: "*Omnes homines aut liberi sunt, aut servi.*" "*Libertas est naturalis facultas ejus, quod cuique facere libet, nisi si quid vi aut jure prohibetur.*" "*Servitus est constitutio juris gentium, qua quis dominio alieno contra naturam subjicitur.*" Lib. 1, tit. 3. And these definitions hold good to this day; for, under every system of law, all men are either freemen or slaves; freedom is the natural power to do what one pleases, unless restrained by force or law; and slavery is an institution of positive law, by which one man is subjected to the dominion of another, against nature.

The three principal maxims laid down by Huberus for determining all questions arising from the conflict of laws, and which have been universally followed, are thus translated by Story: "The first is, that the laws of every empire have force only within the limits of its own government, and bind all who are subjects thereof, but not beyond those limits. The second is, that all persons who are found within the limits of a government, whether their residence is permanent or temporary, are to be deemed subjects thereof. The third is, that the rules of every empire from comity admit that the laws of every people, in force within its own limits, ought to have the same force everywhere, so far as they do not prejudice the powers or rights of other governments, or of their citizens." Story on Conflict of Laws, § 29. It follows that the condition and capacity, impressed upon a person by the law of his birthplace, follow and accompany him everywhere, until he comes to reside, either temporarily or permanently, in a country whose policy prohibits that condition, or refuses to recognize that capacity, and he then changes his condition, and becomes incapable of performing those acts which the law there does not recognize his right to perform. On his return to the country of his birth, or to another State whose laws are similar, he may perhaps reacquire the capacity he had lost, so far as that can be done consistently with the rights of others; but the new condition he has assumed will not be changed, unless that

condition is contrary to the policy of the State to which he returns. And this seems to be the result of all the rules laid down in Huberus *de conflictu legum*, §§ 2, 12, 13, to whom we refer, not only because there is no civilian of higher authority, but also because Mr. Justice Nelson, by citing some parts only of these sections, makes him appear to support a different theory.

The effect of the above principles, as applied to the case of a master and slave going together from a State where slavery is allowed, to a free State, and there residing for a time, and thus becoming subject to its laws, even if they do not acquire a domicil, and then returning together to a slave State, would seem to be this: By the removal into a State where slavery is prohibited by law, the master loses his right of control, and the slave becomes a freeman; and on the return of both to the State where slavery is allowed, the former slave remains free, unless the laws of the State either utterly forbid emancipation, or expressly make a person of his condition, color, or antecedents a slave as soon as he comes within the limits of the State.

Those who deny this result, usually rely, as a foundation for their argument, upon the theory that laws which prohibit slavery affect only the master's right of control, and not the condition of slavery; or as Lord Stowell, after admitting the law, as laid down by Lord Northington, that a negro may maintain an action against his master for ill usage, and may have a *habeas corpus*, if restrained of his liberty, states it, "The law of England relieves him in these respects from the rigors of the slave code while he is in England; and that is all that it does." 2 Hagg. Adm. 117, 118. But the law recognizes no intermediate condition between freedom and slavery; and as slavery consists only in subjection to the dominion of the master, it is somewhat difficult to understand how that dominion can be taken away, and yet the state of slavery continue. Such a construction, instead of giving full effect to the Constitution or law which prohibits the existence of slavery at all, makes it recognize slavery as a right, and only refuse the master the means necessary to enforce that right.

It is not necessary to quote the different forms of words by which slavery is prohibited in the Constitutions and laws of other Northern States; but it would be difficult to frame more apt words of utter denunciation and prohibition than those of the Ordinance of 1787, which have been adopted in the Constitutions of all the States formed

out of the Northwest Territory: "There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted," or as it is expressed in the Missouri Compromise Act: "Slavery and involuntary servitude," otherwise than for crimes, "shall be and is hereby forever prohibited." It is true that each of these territorial acts contains a proviso for the return of fugitive slaves; but the clause of the Constitution of the United States upon that subject is universally admitted not to apply to any slaves but those who escape from the State where they are held into another; and it is only material to be referred to in this connection, as showing that its framers not only understood that slavery was a mere municipal regulation of the State in which the slave was held "under the laws thereof," but that the slave, on escaping into another, would, but for this clause, be "discharged" from such service.

But it is then argued that the view above stated secures the personal rights of the slave, at the expense of the right of property of the master, which being acquired by the laws of his domicil, must, by the comity of nations, be deemed his property everywhere. Without repeating the clauses of the Constitution of the United States, which uniformly speak of slaves as persons, and not as property, (because, as Mr. Madison said, its framers "thought it wrong to admit in the Constitution that there could be property in men,") one answer to this argument is well stated by Chief Justice Shaw: "The argument can apply only to those commodities which are everywhere, and by all nations, treated and deemed subjects of property. But it is not speaking with strict accuracy, to say that a property can be acquired in human beings, by local laws. Each State may, for its own convenience, declare that slaves shall be deemed property, and that the relations and laws of personal chattels shall be deemed to apply to them; as for instance, that they may be bought and sold, delivered, attached, levied upon, &c. But it would be a perversion of terms, to say that such local laws do in fact make them personal property generally; they can only determine that the same rules of law shall apply to them as are applicable to property, and this effect will follow only so far as such laws *proprio vigore* can operate." *Commonwealth* v. *Aves*, 18 Pick. 216.

An equally conclusive answer to the argument founded on the supposed rights of the master is, that the master,

by taking his slave into a country where slavery is prohibited, voluntarily consents to the effect of those laws, and so himself manumits the slave. As Lord Coke says: "There be two kinds of manumissions, one express, and the other implied. Express, when the villein by deed in express words is manumised and made free. The other implied, by doing some act that maketh in judgment of law the villein free, albeit there be no express words of manumission or enfranchisement. *Leges Angliæ semel manumissum semper liberum judicant.*" Co. Lit. 137 *b*. The same principles are recognized in the code of slavery in this country; as proofs of which one or two cases in the supreme court of the United States will suffice. In the words of Mr. Justice Wayne, in delivering its opinion in *Fenwick* v. *Chapman*, "What is manumission? It is the giving of liberty to one who has been in just servitude, with the power of acting, except as restrained by law." 9 Peters, 472. Any act of the master towards the slave, inconsistent with an intention to retain full control over the slave or his acquisitions, is a manumission. Thus a devise or bequest of property, by a master to his slave, entitles the slave to freedom by necessary implication. *Le Grand* v. *Darnell*, 2 Peters, 670.

The slave, then, being absolutely free while in the free State, if his return changes his condition and remands him to slavery again, it must be either by reason of his own implied consent, or of the effect of the laws of the State into which he returns. But neither the old English law of villenage, nor the American law of slavery, will allow a man to become a slave by his own consent merely. This is so well stated in the old books that we cannot but recur to them once more, and we know the attention of our readers is not so often called to those free principles of the common law which were the seed of our liberties, as to make an allusion to them entirely unprofitable. Littleton tells us: "Every villein is either a villein by title or prescription, to wit, that he and his ancestors have been villeins time out of mind of man; or he is a villein by his own confession in a court of record." § 175. This is very clearly explained by Lord Hobart: "The body of a freeman cannot be made subject to distress or imprisonment by contract, but only by judgment." Hob. 61. And again: "By law of nature all men are free, and cannot be brought under the dominion of any, but according to *jus gentium*, viz. the case of captivity, from which our villenage came. And the confession in the court of record is not so much a

creation, as it is in supposal of law a declaration of rightful villenage before, as a confession of other actions; though it is true, as Littleton says, that it shall not bind his issues born before, because the favor of liberty gives them leave to falsify." Hob. 99. To the same effect are Littleton, §§ 176, 185; Co. Lit. 117 *b*, 122 *b;* and Hargrave's note 163. The fact that a man might, by confession in a court of record, make himself a slave, no more shows that he could, by mere consent or contract, reduce himself to slavery, than the fact that a plea of guilty will authorize a sentence of death shows that a man may lawfully consent to his own murder. The impossibility of a man's reducing himself to slavery has been well expressed by the court of appeals of Maryland: "Once free and always free, is the maxim of Maryland law upon the subject. Freedom having once vested, by no compact between the master and liberated slave, nor by any condition subsequent, attached by the master to the gift of freedom, can a state of slavery be reproduced." *Spencer* v. *Dennis*, 8 Gill, 321.

The most plausible argument, in favor of the position that the return of the slave re-establishes his original condition of slavery, is that sought to be derived from the law of the State into which he returns. The argument is that, as the laws of any State have no extra-territorial effect, except by the comity of the State in which they are sought to be enforced, and as no State allows laws which are contrary to its own policy to be enforced within its limits, therefore the same rule which sets the slave free on his arrival in a State where slavery is prohibited, makes him a slave again upon his return to a State where slavery is established by law. But the fallacy of this argument is, that while slavery is contrary to the laws of a free State, freedom is not contrary to the policy of a slave State; or, in other words, the laws of a free State make every slave who comes under their operation a freeman, but the laws of a slave State do not usually make a freeman a slave.

If there were any statute of the slave State expressly making a negro a slave upon his return, that would, of course, however unjustly, put an end to the free condition which he had acquired, unless he had resided so long in the free State as to become a citizen thereof, in which case he would, at least while he remained a citizen of that State, be entitled to protection by virtue of the provision of the Constitution of the United States, by which the citizens of each State are entitled to all immunities of citizens in the other States; for whatever may be the extent of the

rights conferred by that clause, it must at least exempt citizens from being made slaves. And it seems to us that it is only in view of this provision that the question whether Dred Scott acquired a domicil in the free State could become at all material, for the two years' residence of his master and himself in Illinois was certainly long enough to subject them to the operation of the laws of that State.

Cases are to be found in the highest court of every slave State in which the question has arisen, recognizing the condition of freedom acquired by a slave who has been submitted, with the consent of his master, to the operation of a Constitution or laws forbidding slavery. Such cases are *David* v. *Porter*, 4 Har. & McHen. 418, in Maryland; *Griffith* v. *Fanny*, Gilmer, 143, and *Foster* v. *Foster*, 10 Grat. 485, in Virginia; *Rankin* v. *Lydia*, 2 A. K. Marsh. 470, and *Mercer* v. *Gilman*, 11 B. Monroe, 210, in Kentucky; and *Blackmore* v. *Phill*, 7 Yerger, 452, in Tennessee. The only disputes have been upon what facts would show the consent of the master, and how long a residence was necessary to give effect to the law of the free State. The decisions in the States of Maryland and Virginia, mutually giving effect to each other's statutes, enfranchising slaves imported contrary to law, strongly tend to the same conclusion; for there is surely no reason why a general law, prohibiting all slavery whatever, should have a more limited effect, in any respect, than a statute conferring freedom on slaves brought into the State under particular circumstances. Such decisions were *Stewart* v. *Oakes*, 5 Har. & Johns. 107, note; and *Hunter* v. *Fulcher*, 1 Leigh, 172.

The only other slave States, so far as we know, in which decisions have been made upon this question, are Missouri and Louisiana; and it is somewhat remarkable, in view of the argument, to which we have already alluded, of the peculiar rights supposed to be secured by the treaty under which the Louisiana Territory was acquired, that no courts have gone farther than those of the States formed out of this Territory, in recognizing the rights of slaves to their freedom, growing out of a residence in a free State or Territory.

The supreme court of Missouri, within the first sixteen years after the admission of that State into the Union, repeatedly decided that a slave residing for any time, either in the State of Illinois or in the Territory of the United States, where slavery was prohibited by act of Congress, was free, and might enforce his right to freedom in the courts of Missouri; and even applied this doctrine to the

case of a slave held in Illinois only one month, with the intention of being returned to Missouri; and to that of a slave taken by an officer in the army of the United States, for a temporary residence, to a military post in such Territory. *Julia* v. *McKinney*, 3 Missouri, 270; *Rachael* v. *Walker*, 4 Missouri, 350. But in 1852, in a suit brought by this plaintiff, Dred Scott, to try his right to freedom, two judges, forming a majority of the court, overruled these decisions, in an opinion in which, admitting the constitutionality of the Missouri Compromise Act, and the perfect freedom conferred upon the plaintiff by the laws governing the State and Territory in which he had resided, they refused to give any effect to those laws, because of the spirit which had lately prevailed in the free States in relation to the institution of slavery; but Mr. Justice Gamble, the most distinguished member of the court, delivered a very able dissenting opinion. *Scott* v. *Emerson*, 15 Missouri, 476. For the convenience of our readers, many of whom may not have access to that volume of reports, we give in a note at the end of this article a statement of the case, and all the important parts of each opinion, in the very words of the judges. The decision has since been twice affirmed without any renewed dissent. *Calvert* v. *Steamboat Timoleon*, 15 Missouri, 597; *Sylvia* v. *Kirby*, 17 Missouri, 434. But the new doctrine does not seem to be treated as of universal application; for in a later case concerning such rights acquired in Canada, the same judge who delivered the opinion in Dred Scott's case said: "When any of the negro race, who were reduced to slavery, acquired their freedom under the laws of the country in which they lived, we are aware of no law by which they, except for crime, can be again reduced to slavery." *Charlotte* v. *Chouteau*, 21 Missouri, 597. This last case was decided less than two years ago, and does not appear to have been brought to the notice of the supreme court of the United States in the case of Dred Scott, probably because it was not reported when that case was argued. The passage just cited would seem to accord better with the doctrine which we have attempted to maintain, and which was originally established by the supreme court of Missouri, than with the law laid down by that court in the intermediate decisions. But as that court has not expressed any intention to overrule or revise those decisions, the present law of Missouri on this question, so far as it can be ascertained from the decisions of its supreme court, would seem to refuse to recognize rights of freedom acquired by a residence in any

place within the United States in which slavery is prohibited, but to give effect to such rights acquired in a foreign country.

No court has more consistently adhered to correct principles on this subject than the supreme court of Louisiana, which has repeatedly held that the fact of a slave having been taken to France, or to any State where slavery or involuntary servitude was not tolerated, operated on the condition of the slave, so as to produce an immediate emancipation; and, as was said by the court in one case, "being free for one moment in France, it was not in the power of her former owner to reduce her again to slavery." *Marie Louise* v. *Marot*, 9 Louisiana, 473; *Smith* v. *Smith*, 13 Louisiana, 441; *Lunsford* v. *Coquillon*, 14 Martin, 403; *Josephine* v. *Poultney*, 1 Louisiana Annual Rep. 329. Even the statute of Louisiana of 1846, establishing a contrary rule, has been refused any effect on persons who thus acquired a right to freedom before it was passed. *Eugenie* v. *Preval*, 2 Louisiana Annual Rep. 180. And Chief Justice Eustis, in 1847, in the case of a slave who had resided with her master in France two years, (a period exactly equal to that of Dred Scott's residence in Illinois, and also to that of his residence in the Territory,) after citing some of the earlier Louisiana cases, very clearly states the law thus: "It is contended that this case does not come within the principle of those cases, inasmuch as the defendant acquired no domicil in France, as his absence from Louisiana was but temporary, where his property remained and his business continued, and he never lost his original residence. We consider that the jurisprudence of this State has settled this question, which has been more than once the subject of discussion. We cannot expect that foreign nations will consent to the suspension of the operations of their fundamental laws, as to persons voluntarily sojourning within their jurisdiction for such a length of time. As to those thrown on foreign coasts by shipwreck, taking refuge from pirates, driven by overwhelming necessity, or perhaps those passing through a foreign territory on a lawful journey, their personal condition may remain unchanged; but this is the extent to which an immunity from the effect of the foreign law could be maintained under the laws of nations." *Arsene* v. *Pigneguy*, 2 Louisiana Annual Rep. 621.

The principal authority in support of the opposite view, is the opinion of Lord Stowell in the case of the *Slave Grace*, 2 Hagg. Adm. 94, and as that is the foundation of all

similar decisions since, it is important that the case should be clearly understood. It was not, as is often supposed, a suit for freedom, nor was the slave in any way a party to the proceeding, but only the thing, the forfeiture of which was the sole purpose of the suit. It was an information in admiralty, filed in the name of the King by an officer of the customs, on the acts of parliament of 47 and 59 Geo. III., one prohibiting the slave trade, and the other prohibiting the transportation of any person as a slave from one colony to another without a certificate of registry. The counts relied on were three; one for exporting the slave from Antigua to England, and another for bringing her back, without the certificate required; and the third for unlawfully importing her, being a free subject, as a slave from Great Britain to Antigua, "contrary to the form of the statute in such case made and provided." Lord Stowell held that the registry act applied only to slaves transported from one colony to another, and not to those carried to or from the mother country; and that the act prohibiting the slave trade did not apply to the importation of persons who were actually free; and, as the penalty prescribed by each of these statutes, the recovery of which was the only legitimate purpose of this information, was the forfeiture of the slave, (to be apprenticed under the direction of the Crown and ultimately enfranchised,) that the information could not, in any aspect of the case, be maintained; and therefore, according to the uniform practice in admiralty, decreed that the slave, the subject sought to be forfeited, be restored to the custody of the claimant.

But Lord Stowell also proceeded to discuss the general question whether the slave, after her return to Antigua, was to be deemed free, by reason of her residence in England; and arrived at the conclusion that she was not. The chief arguments on which this conclusion was based were four; first, the limited operation of the law of England upon the condition of the slave, and second, the effect of the slave's voluntary return to the slave colony — both of which questions we have already considered; third, the fact that, though fifty years had elapsed since *Sommersett's case*, no slave, after such return, had claimed his liberty — a fact which could hardly be judicially known, and if true, should not have had greater effect than was allowed by Lord Mansfield to the fact that thousands of slaves were actually held under a claim of right in London, when he declared Sommersett free; and fourth, the countenance given by the laws of Great Britain herself to the existence of slavery

in her colonies, under the same imperial jurisdiction; which is suggested by the able Chief Justice of Louisiana, in the case last cited, as the only ground upon which Lord Stowell's opinion on this point is to be supported.

It is worthy of remark that the learned admiralty judge, at the same time that he was treating the reasons of Lord Mansfield in Sommersett's case, as *obiter dicta* and unnecessary to the decision of that case, himself fell into the very irregularity which he insinuates, rather than directly charges, against that great magistrate; for his opinion upon the construction of the statutes on which the information was founded, rendered the question whether Grace was free or slave immaterial to the decision. In a very similar case, the supreme court of the United States, ten years later, did not follow Lord Stowell's example in this respect. Upon a process in admiralty, commenced in behalf of the United States, under the act of congress prohibiting the slave trade, to enforce the forfeiture of a vessel in which a slave, previously carried from Louisiana to France by her mistress, had been brought back to Louisiana, the court placed their decision upon the simple ground that the act of Congress did not apply to the case, Chief Justice Taney, who delivered the opinion, saying: "Even assuming that by the French law she was entitled to freedom, there is nothing in the act of congress under which these proceedings were had, to prevent her mistress from bringing or sending her back to her place of residence, and continuing to hold her as before in her service." "The language of the act cannot properly be applied to persons of color who are domiciled in the United States, and who are brought back to their place of residence, after a temporary absence." *United States* v. *The Garonne*, 11 Peters, 77.

No American authority has been so often cited and relied on, as confirming Lord Stowell's view of this question, as that of Chief Justice Shaw. But the few words dropped by that great judge in *Commonwealth* v. *Aves*, 18 Pick. 208, 218, have certainly been treated as expressing a more decided and deliberate opinion than the circumstances under which they were spoken, or the words themselves warrant. The only point adjudged in the case was that a slave brought by her master into Massachusetts, though for a mere temporary purpose, could not be restrained of her liberty here, or carried back into a slave State, without her consent. The question of the effect which a voluntary return would have upon the rights of the slave, was not involved in the decision, and though the case of the *Slave*

Grace and other similar cases were urged upon the court, with his usual force, by Mr. Justice Curtis, then of counsel for the master, it does not appear that this question was discussed at all by the counsel for the slave; and the intimation of the Chief Justice in favor of the opinion of Lord Stowell is immediately preceded by the distinct statement that it "is a question which was incidently raised in the argument, but is one on which we are not called on to give an opinion in this case, and we give none." 18 Pick. 218.

Such being that case, we venture to suggest that the theory that a slave brought to Massachusetts does not become absolutely free, is not only inconsistent with general principles, but with the Declaration of Rights, quoted in the earlier part of this article. It is not likely that the question of the condition of a slave, after returning to a slave State, can ever directly arise in Massachusetts; but the spirit of her laws in this matter is clearly shown by many adjudged cases. A few years before the case of Aves, Chief Justice Shaw remanded a negro boy, brought before him by writ of *habeas corpus*, to the custody of his mistress, only upon the ground that she, "having, by her return to the writ, disclaimed to hold him as a slave, had made a record of his freedom, and could not make him a slave again in the Island of Cuba;" and further said that "the boy, by the law of Massachusetts, was in fact free," and if the mistress had claimed him as a slave, he should have ordered him to be discharged from her custody. *Francisco's case*, 9 Amer. Jurist, 490. And in a later case the supreme court refused to allow a negro boy, only seven or eight years old, to be carried back into slavery, even with his own consent, but ordered him to be delivered to a guardian appointed by the judge of probate. *Commonwealth* v. *Taylor*, 3 Met. 72. These cases do not seem to countenance the idea that the law of Massachusetts recognizes the condition of slavery as merely suspended, but still existing, while the master and slave are within her limits. And a negro's voluntary submission of himself and all his future offspring to hereditary slavery would seem to be hardly consistent with the principle of the law of Massachusetts, under which no one was ever born a slave in this Commonwealth, even before the adoption of the present Constitution, as is perfectly well established by a series of reported decisions, beginning with *Littleton* v. *Tuttle*, 4 Mass. 128, note, (1796), and ending with *Edgartown* v. *Tisbury*, 10 Cush. 408, (1852,) where all the other authorities

are collected. The best statement of the law of Massachusetts, that we have seen, is by President Tucker of the court of appeals of Virginia, who, after alluding to the case of the *Slave Grace*, said: "In Massachusetts, however, it seems that the Constitution of the State must have been interpreted to have a more extensive operation; as it appears to have been decided, that the issue of a female slave, though born prior to the Constitution, was free. 2 Kent Com. 205. If this be so, the Constitution has received an interpretation, which goes to divest the title of the master, to break the bonds of the slave, and to annul the condition of servitude. It emancipates and sets free, by its own force and efficacy, and does not await the enforcement of its principles by judicial decision. It is more operative than the common law, and more resembles the effect of our statute, declaring free all slaves imported contrary to law." *Betty* v. *Horton*, 5 Leigh, 623.

We have discussed this question with some care, because Justices Nelson, Daniel, and Campbell intimate opinions that, on general principles, independently of the decisions in Missouri, Scott was a slave after his return, and as Justices Grier and Catron concur generally with Mr. Justice Nelson, such may perhaps be taken to be the opinion of a majority of the judges. But this opinion is not even suggested by the Chief Justice or Mr. Justice Wayne, and is not entitled to the weight of judicial authority, because it was not necessary to the decision of the case. For we must constantly bear in mind the rule, affirmed by Chief Justice Marshall, that "the positive authority of a decision is coextensive only with the facts on which it is made." And one most important fact in this case, the effect of which yet remains to be considered, is that the plaintiff, after his return, being then an inhabitant of Missouri, had been declared by the supreme court of that State to be a slave. The decision of that court, not being in form a final judgment, but merely an order granting a new trial, did not, of course, determine the plaintiff's right to freedom, which was the fact in dispute between the parties; but it is evidence of the law of Missouri on the question, and as such is much relied on by the majority of the judges of the supreme court of the United States.

V. That the plaintiff, at the time of bringing his suit in the State court, as well as of suing in the circuit court of the United States, was an inhabitant, and in every sense of the word, a subject, of Missouri, cannot be doubted. It is clear upon the principles and authorities which we

have stated in discussing the fourth division of our subject, that he and his master resided so long in the free State and Territory, as to become subject to their laws; but we are inclined to the opinion that the mere fact of the residence of an officer of the navy for two years at a military post, under the orders of his government, does not of itself raise a presumption of change of domicil of the officer or his servant, and that the facts agreed would not therefore warrant an inference that the plaintiff and his master became actually domiciled either in Illinois or in the Territory. But whether this be so or not, the fourteen years' residence of the plaintiff in Missouri after his return before the decision of the State court in his case, is much more conclusive evidence of his having resumed his domicil in Missouri, than the other facts of the case are of his having ever lost it. And the plaintiff in his writ alleged himself to be a citizen of Missouri, and upon that ground only claimed the right to maintain his suit in the courts of the United States.

Measuring the point adjudged, therefore, by all the material facts of the case, it is set forth at length in our head note, or may be briefly stated thus: A slave taken by his master into a State or Territory where slavery is prohibited by law, and afterwards returning with his master into a slave State, and acquiring a residence there, if deemed by the highest court of that State, after his return, to be a slave, must be deemed a slave by the courts of the United States, and therefore not entitled to sue in one of those courts as a citizen of that state. In this conclusion seven of the nine judges concur; and it is best stated by Mr. Justice Nelson, whose opinion is wholly devoted to the question of the plaintiff's condition in Missouri after his return, and is the ablest in reasoning and most judicial in tone of all the opinions of the majority. It also bears conclusive marks on its face of having been prepared to be the opinion of the court, as will be put beyond doubt by a few quotations from it. "In the view *we* have taken of the case," he says, when speaking of the plea in abatement, "it will not be necessary to pass upon this question, and *we* shall therefore proceed at once to an examination of the case upon its merits." p. 458. "*Our* opinion is, that the question is one which belongs to each State to decide for itself, either by its legislature or courts of justice." p. 459. "*Our* conclusion therefore is, upon this branch of the case, that the question involved is one depending solely upon the laws of Missouri, and that the federal court sitting in the State, and trying

the case before us, was bound to follow it." p. 465. The single introductory paragraph in which "I" is substituted for "we," only serves to call more distinct attention to the use of the plural pronoun throughout the opinion.

How much more weight of authority and general acquiescence this decision would have commanded, if the majority of the judges had confined themselves to the point necessary to the judgment, and forborne to express so many extrajudicial opinions, is not within our province to discuss. We have freely exercised the right, which is allowed to every member of the profession, of controverting arguments and opinions advanced on any legal question by any individual, however distinguished by ability or position, so long as it is not judicially adjudged and settled. But upon the single point adjudicated, more deference is due to the deliberate judgment of the highest tribunal of the country. As two of the judges, however, and those not the least eminent, do not concur even in the judgment, we feel it to be our duty to examine the soundness of the positions upon which it rests.

There is not a perfect uniformity in the decisions of the supreme court of the United States, defining the extent to which the courts of the United States should follow the decisions of the State courts. But the true principle, which reconciles most of the cases, seems to be that decisions of the State courts are binding in matters of State policy, or questions governed by local rules, as to which it is essential that there be a uniform administration of law within the State, but comparatively immaterial whether the same rules prevail in all the States. Such are cases arising upon the construction of the Constitution and statutes of the State, local usages, or any well settled rules as to the title to real estate, whether depending upon common law, statute, or judicial decision. *Bank of Hamilton* v. *Dudley*, 2 Peters, 524; *Luther* v. *Borden*, 7 Howard, 40; *Nesmith* v. *Sheldon*, 7 Howard, 818; *Webster* v. *Cooper*, 14 Howard, 504; *Jackson* v. *Chew*, 12 Wheaton, 162; *Beauregard* v. *New Orleans*, 18 Howard, 502. But on questions of the law merchant, or general principles of chancery, which are of universal application, and as to which uniformity of construction throughout the States is desirable, the supreme court of the United States does not follow the decisions of the State courts, unless satisfied of their correctness; *Swift* v. *Tyson*, 16 Peters, 18; *Neves* v. *Scott*, 13 Howard, 272; and on those subjects has even refused to allow any effect to statutes of the State. *Boyle* v. *Zacharie*, 6 Peters, 658;

Watson v. *Tarpley*, 18 Howard, 521. This last fact would seem conclusively to show that the extent to which the courts of the United States will be bound by the decisions of the State courts, does not depend upon the question whether or not those decisions turned upon the construction of a statute of the State.

The determination of the personal *status*, or domestic and social condition of the inhabitants of a State, affects not only their contracts and relations towards each other, but their political rights and duties and their relation to the State itself; and would therefore seem to be, above all others, a subject over which the exclusive control of the State, except so far as expressly limited by the Constitution of the United States, is essential to the maintenance of the State government, and the preservation of harmony between it and the federal power. As was said by Chief Justice Marshall, in the first of the cases just cited, "the judicial department of every government is the rightful expositor of its law." And that this maxim extends to the determination of questions depending upon general principles of comity, and of the respect which, consistently with the policy of the State, may be allowed to the laws of other States, is sufficiently shown by the following statement of Judge Story, which has been approved by the supreme court of the United States: "It is not the comity of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning, by which all other principles of the municipal law are ascertained and guided." Story on Conflict of Laws, § 38. *Bank of Augusta* v. *Earle*, 13 Peters, 589. These reasons apply with peculiar force to the question whether any inhabitant is a slave or citizen; and the Constitution of the United States, far from limiting the rights of the State in this respect, does not authorize any intermeddling by the national government with the relation of master and slave in the States, and, as we have seen, expressly leaves it to the several States to determine who shall be citizens. The same spirit has influenced the only two decisions of the supreme court of the United States upon this subject.

The first, which was decided in 1834 by the unanimous opinion of the court of that day, of whom Mr. Justice McLean is the only survivor, concerned the condition in Tennessee of children of a slave woman, born before the emancipation to which the mother would be entitled under her

master's will, took effect. The court said, that if this were an open question, it might be urged with some force that the condition of the children, until their mother's emancipation, was not that of absolute slavery; but was, by the will, converted into a modified servitude, to end when the emancipation should take effect; that if the mother was not an absolute slave, it would seem to follow that the children would stand in the same condition. But upon the ground that by the decisions of the supreme court of Tennessee, although there was no statute on the subject, a female thus situated was considered a slave, whose manumission was only conditional, and, until the condition happened upon which freedom was to take effect, remained to all intents and purposes an absolute slave, the children were adjudged to be absolute slaves. *M'Cutchen* v. *Marshall*, 8 Peters, 241.

The other case was decided in 1850. It was a suit brought on a statute of Kentucky by the master of slaves, against the captain of a steamboat, to recover the value of slaves escaping into a free State; the defence relied on was that the slaves were free, by reason of having previously been in Ohio with their master's consent; but as it appeared that they had never resided for any time in Ohio, and had remained in their master's service two years after their return, the court of appeals of Kentucky gave judgment for the plaintiff; and the defendant brought the case by writ of error to the supreme court of the United States. And Chief Justice Taney, in delivering the opinion of the court, clearly laid down the doctrine thus: "Every State has an undoubted right to determine the *status*, or domestic and social condition of persons domiciled within its territory; except in so far as the powers of the States in this respect are restrained, or duties and obligations imposed upon them, by the Constitution of the United States. There is nothing in the Constitution of the United States that can in any degree control the law of Kentucky upon this subject. And the condition of the negroes, therefore, as to freedom or slavery, after their return, depended altogether upon the laws of that State, and could not be influenced by the laws of Ohio. It was exclusively in the power of Kentucky to determine for itself whether their employment in another State should or should not make them free on their return. The court of appeals have determined that by the laws of the State they continued to be slaves. And their judgment upon this point is, upon this writ of error, conclusive upon this court, and we have no jurisdiction over it." "The

Ordinance of 1787, if still in force, could have no more operation than the laws of Ohio in the State of Kentucky, and could not influence the decision upon the rights of the master or the slaves in that State, nor give this court jurisdiction upon the subject." *Strader* v. *Graham*, 10 Howard, 93, 94. It is true that, as that case came by writ of error from a State court, the point on which the decision turned was that the supreme court had no jurisdiction of the case under the twenty-second section of the judiciary act of 1789, because the judgment of the State court involved no question arising under the Constitution or laws of the United States. But the passages above cited show the reasons which led the court to this decision. And the remark about the Ordinance of 1787 shows that the refusal of a State to give extra-territorial operation to an act of congress for the government of a Territory was not a decision against any existing right claimed under a law of the United States.

If the law of the State, as declared by its judges, is to finally determine this question, the fact that the State courts formerly laid down the law differently would not seem to be of any importance, provided the new exposition has been so repeatedly affirmed that it must now be considered as the settled law of the State; and that such was the condition of the law of Missouri on this point, at least so far as it was made known to the supreme court of the United States, we have already shown. In former times, the supreme court of the United States was accustomed to follow the decisions of the State courts upon matters within their province, even when contrary to the law as previously established by those courts, and declared by the courts of the United States. *Elmendorf* v. *Taylor*, 10 Wheaton, 165; *United States* v. *Morrison*, 4 Peters, 124; *Green* v. *Neal*, 6 Peters, 298, 299. As was said by Mr. Justice McLean, twenty-five years ago, in delivering the opinion of the court in the case last cited: "The same reason which influences this court to adopt the construction given to the local law, in the first instance, is not less strong in favor of following it in the second, if the State tribunals should change the construction. A reference is here made not to a single adjudication, but to a series of decisions which shall settle the rule. Are not the injurious effects on the interests of the citizens of a State as great, in refusing to adopt the change of construction, as in refusing to adopt the first construction?"

It must be admitted, however, that in many recent cases the supreme court has refused to be bound by decisions of

State courts even when construing their own Constitutions or laws, if opposed to former decisions of the same courts, or of the courts of the United States, especially as to contracts made and rights acquired while the first construction prevailed. *Rowan* v. *Runnels*, 5 Howard, 139; *Ohio Life Insurance & Trust Company* v. *Debolt*, 16 Howard, 431; *Pease* v. *Peck*, 18 Howard, 599. Justices McLean and Curtis, therefore, in refusing to be bound by the more recent State decisions against their own convictions of justice, only followed the modern practice of the supreme court of the United States. And we assent to the present decision as being a return to the older and sounder doctrine; though it must be confessed that the court could hardly have selected, for a revival of that doctrine, a State decision which was a greater violation of general principles of law or of the rights of the party, than the decision of the supreme court of Missouri in the plaintiff's case.

The most striking argument against allowing any binding force to the decision of the supreme court of Missouri is, that, as that decision was expressly founded on a refusal to allow any effect to rights secured by an act of congress admitted by that court to be valid, if the supreme court of the United States should hold itself bound by the decision, it would give effect, in a spirit of comity, to a decision which was arrived at only by refusing a like comity to the laws of the United States. But if, for reasons founded upon public policy, and upon the true relation between the State and federal governments, the political and social condition of the inhabitants of a State is, so far as it is not affected by the Constitution and laws of the United States, to be determined exclusively by the State courts, it can make no difference whether that condition is to be ascertained by a consideration of the Constitution and laws of that State, or of the extra-territorial effect to be given, in a spirit of comity, to other local laws, even if those laws happen to be acts of congress.

The other arguments against the conclusion of the majority of the court are founded on the disregard by the Missouri court of the rights of the plaintiff and his family, and of the helpless condition in which they would be left if the supreme court of the United States should refuse to interpose. But the fact that, when the plaintiff married in the Territory, and returned to Missouri, he was, by the then well settled laws of that State, a freeman, though it proves the injustice of the decision of the State court, surely affords no reason why the courts of the United States should disre-

gard that decision in a matter, the exclusive determination of which belongs to the State. And the condition of the plaintiff's wife and children was not in issue in this case, for the judgment against the plaintiff was founded upon his personal disability to maintain any action, and on that alone.

We cannot bring this article to a close without saying a word of the opinions of the two dissenting judges, which are certainly entitled to at least as much weight, on any point not directly adjudged by the court, as any of the opinions of the majority. Indeed, as they passed upon no point not necessary to the conclusion at which they thought the court should arrive, they may perhaps be considered as of more judicial authority. Of Mr. Justice McLean it is enough to say that his opinion is worthy of the only surviving associate of Marshall, Washington, Story, and Thompson, and of the judge whose circuit includes the territory consecrated to freedom by the Ordinance of 1787. The opinion of Mr. Justice Curtis is, by the common consent of the profession and of the public, the strongest and clearest, as well as the most thorough and elaborate of all the opinions delivered in this case, and fitly closes with the following admirable definition of judicial duty: "I have touched no question which, in the view I have taken, it was not absolutely necessary for me to pass upon, to ascertain whether the judgment of the circuit court should stand or be reversed. I have avoided no question on which the validity of that judgment depends. To have done either more or less, would have been inconsistent with my views of my duty."

We have thus examined the four points commonly supposed to have been decided in the case, and shown, so far as we were able, that the court have not, and could not have, consistently with sound principles, decided that a free negro could not be a citizen of the United States; nor that congress had no power to prohibit slavery in the Territories; nor that a master might hold his slave in any free State; nor that the slave, by returning with his master, would necessarily become a slave again. We have also stated the reasons which have led us to acquiesce in the result at which the majority of the court arrived upon the only point necessary to the decision of the case, namely, that the condition of the plaintiff, being now an inhabitant of Missouri, must be conclusively determined by the law of that State, as declared by its supreme court. How far we have succeeded in our undertaking, our readers must decide.

NOTE. — The only report of the facts of the suit of Dred Scott before the supreme court of Missouri, is in the opinion of the majority of the court in that case, and is in these words: "This was an action instituted by Dred Scott against Irone Emerson, the wife and administratrix of Dr. John Emerson, to try his right to freedom. His claim is based upon the fact that his late master held him in servitude in the State of Illinois, and also in that territory ceded by France to the United States, under the name of Louisiana, which lies north of 36° 30′, north latitude, not included within the limits of the State of Missouri. It appears that his late master was a surgeon in the army of the United States, and during his continuance in the service, was stationed at Rock Island, a military post in the State of Illinois, and at Fort Snelling, also a military post in the Territory of the United States, above described, at both of which places Scott was detained in servitude — at one place, from the year 1834 until April or May, 1836; at the other, from the period last mentioned until the year 1838. The jury was instructed, in effect, that if such were the facts, they would find for Scott. He accordingly obtained a verdict. The defendant moved for a new trial on the ground of misdirection by the court, which being denied to her, she sued out this writ of error." 15 Missouri, 582.

The opinion of the majority of the court was as follows: "The States of this Union, although associated for some purposes of government, yet, in relation to their municipal concerns, have always been regarded as foreign to each other. The courts of one State do not take judicial notice of the laws of other States. They, when it is necessary to be shown what they are, must be proved like other facts. So of the laws of the United States, enacted for the mere purpose of governing a Territory. These laws have no force in the States of the Union; they are local, and relate to the municipal affairs of the Territory." "Every State has the right of determining how far, in a spirit of comity, it will respect the laws of other States. Those laws have no intrinsic right to be enforced beyond the limits of the State for which they were enacted. The respect allowed them will depend altogether on their conformity to the policy of our institutions. No State is bound to carry into effect enactments conceived in a spirit hostile to that which pervades her own laws." "It is a humiliating spectacle, to see the courts of a State confiscating the property of her own citizens by the command of foreign law. If Scott is freed, by what means will it be effected, but by the Constitution of the State of Illinois, or the Territorial laws of the United States? Now, what principle requires the interference of this court? Are not those governments capable of enforcing their own laws; and if they are not, are we concerned that such laws should be enforced, and that, too, at the cost of our own citizens? States, in which an absolute prohibition of slavery prevails, maintain that if a slave, with the consent of his master, touch their soil, he thereby becomes free. The prohibition in the act, commonly called the Missouri Compromise, is absolute." "Now, are we prepared to say that we shall suffer these laws to be enforced in our courts? On almost three sides the State of Missouri is surrounded by free soil. If one of our slaves touch that soil with his master's assent, he becomes entitled to his freedom. If a master sends his slave to hunt his horses or cattle beyond the boundary, shall he thereby be liberated? But our courts, it is said, will not go so far. If not go the entire length, why go at all? The obligation to enforce to the proper degree, is as obligatory as to enforce to any degree. Slavery is introduced by a continuance in the Territory for six hours as well as for twelve months, and so far as our laws are concerned, the offence is as great in the one case as in the other. Laws operate only within the territory of the State for which

they are made, and by enforcing them here, we, contrary to all principle, give them an extra-territorial effect."

"There is no ground to presume or to impute any volition to Dr. Emerson, that his slave should have his freedom. He was ordered by superior authority to the posts where his slave was detained in servitude, and in obedience to that authority, he repaired to them with his servant, as he very naturally supposed he had a right to do. To construe this into an assent to his slave's freedom would be doing violence to his acts. Nothing but a persuasion, that it is a duty to enforce the foreign law as though it was one of our own, could ever induce a court to put such a construction on his conduct."

"An attempt has been made to show that the comity extended to the laws of other States is a matter of discretion, to be determined by the courts of that State in which the laws are proposed to be enforced. If it is a matter of discretion, that discretion must be controlled by circumstances. Times now are not as they were when the former decisions on this subject were made. Since then not only individuals but States have been possessed with a dark and fell spirit in relation to slavery, whose gratification is sought in the pursuit of measures whose inevitable consequence must be the overthrow and destruction of our government. Under such circumstances it does not behoove the State of Missouri to show the least countenance to any measure which might gratify this spirit. She is willing to assume her full responsibility for the existence of slavery within her limits, nor does she seek to share or divide it with others. Although we may, for our own sakes, regret that the avarice and hardheartedness of the progenitors of those who are now so sensitive on the subject ever introduced the institution among us, yet we will not go to them to learn law, morality, or religion, on the subject." 15 Missouri, 583 – 587.

Mr. Justice Gamble dissented for the following reasons: "In every slaveholding State in the Union, the subject of emancipation is regulated by statute, and the forms are prescribed in which it shall be effected. Whenever the forms, required by the laws of the State in which the master and slave are resident, are complied with, the emancipation is complete, and the slave is free. If the right of the person thus emancipated is subsequently drawn in question in another State, it will be ascertained and determined by the law of the State in which he and his former master resided; and when it appears that such law has been complied with, the right to freedom will be fully sustained in the courts of all the slaveholding States, although the act of emancipation may not be in the form required by the laws of the State in which the court is sitting.

"In all such cases, courts continually administer the law of the country where the right was acquired; and when that law becomes known to the court, it is just as much a matter of course to decide the rights of the parties according to its requirements, as it is to settle the title of real estate, situate in our State, according to our own laws.

"We, here, are the citizens of one nation, composed of many different States which are all equal, and are each and all entitled to manage their own domestic interests and institutions by their own municipal law, except so far as the Constitution of the United States interferes with that power. The perfect equality of the different States lies at the foundation of the Union. As the institution of slavery in the States is one over which the Constitution of the United States gives no power to the general government, it is left to be adopted or rejected by the several States, as they think best. Nor can any one State, nor any number of States, claim the right to interfere with any other State, upon the question of admitting or excluding this institution. It must be borne in mind, that this freedom

and equality of the different States supposes that each can, of its own will, according to its own judgment, exclude slavery, with as little cause of offence to any of the other States, as if its decision was in favor of admitting it. As citizens of a slaveholding State, we have no right to complain of our neighbors of Illinois, because they introduce into their State Constitution a prohibition of slavery; nor has any citizen of Missouri, who removes with his slave to Illinois, a right to complain that the fundamental law of the State to which he removes, and in which he makes his residence, dissolves the relation between him and his slave. It is as much his voluntary act, as if he had executed a deed of emancipation. Nor can any man pretend ignorance, that such is the design and effect of the constitutional provision. The decisions which have heretofore been made in this State, and in many other slaveholding States, give effect to this and other similar provisions, on the ground that the master, by making the free State the residence of his slave, has voluntarily subjected himself and property to a law, the operation of which he was bound to know. It would seem difficult to make any sound distinction beween the effect of an emancipation produced by the act of the master, in thus voluntarily placing his slave under the operation of such a law, and that of an emancipation produced by the act of the master, by the execution of an instrument of writing in any State where the slave resided, which, according to the law of that State, would be sufficient to discharge the slave from servitude, although it might not be a valid emancipation under the laws of another State.

"While I merely glance at the reasons which might be urged in support of the present plaintiff's claim to freedom, if it were an original question, I do not propose to rest my dissent from the opinion given in this case, upon the original reasoning in support of the position. I regard the question as conclusively settled, by repeated adjudications of this court, and if I doubted or denied the propriety of those decisions, I would not feel myself any more at liberty to overturn them, than I would any other series of decisions, by which the law upon any other question was settled. There is, with me, nothing in the law relating to slavery, which distinguishes it from the law on any other subject, or allows any more accommodation to the temporary public excitements which are gathered around it." "In the midst of all such excitement, it is proper that the judicial mind, calm and self-balanced, should adhere to principles established when there was no feeling to disturb the view of the legal questions upon which the rights of parties depend. In this State, it has been recognized, from the beginning of the government, as a correct position in law, that a master who takes his slave to reside in a State or Territory where slavery is prohibited, thereby emancipates his slave. *Winney* v. *Whitesides*, 1 Mo. Rep. 473; *LeGrange* v. *Chouteau*, 2 Mo. Rep. 20; *Milley* v. *Smith*, Ibid. 36; *Ralph* v. *Duncan*. 3 Mo. Rep. 194; *Julia* v. *McKinney*, Ibid. 270; *Natt* v. *Ruddle*, Ibid. 400; *Rachael* v. *Walker*, 4 Mo. Rep. 350; *Wilson* v. *Melvin*, Ibid. 592. These decisions, which come down to the year 1837, seem to have so fully settled the question, that since that time there has been no case bringing it before the court for any reconsideration until the present." "The cases here referred to are cases decided when the public mind was tranquil, and when the tribunals maintained in their decisions the principles which had always received the approbation of an enlightened public opinion. Times may have changed, public opinion may have changed, but principles have not and do not change; and, in my judgment, there can be no safe basis for judicial decisions, but in those principles, which are immutable." 15 Missouri, 588–592.

THE DRED SCOTT DECISION.

OPINION OF CHIEF JUSTICE TANEY,

WITH

AN INTRODUCTION

BY

DR. J. H. VAN EVRIE.

ALSO,

AN APPENDIX,

CONTAINING AN ESSAY ON THE

NATURAL HISTORY OF THE PROGNATHOUS RACE

Of Mankind,

ORIGINALLY WRITTEN FOR THE NEW YORK DAY-BOOK,

BY

DR. S. A. CARTWRIGHT,

OF NEW ORLEANS.

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APPENDIX.

SINCE that part of the foregoing review which relates to the citizenship of free negroes was printed, our attention has been directed to the case of the seamen taken out of the American frigate Chesapeake, by the British ship of war Leopard in 1807, which was the beginning of the difficulty between the United States and Great Britain, that ultimately led to the war of 1812. The committee of the House of Representatives, to whom the subject was referred, reported to the house "that it has been incontestably proven, as the accompanying printed document No. 8 will show, that" three of the men taken (naming them) "are citizens of the United States." By the document referred to, it appears that two of these three men were colored, one of them the child of a female slave, and who had himself formerly been held as a slave. See Report of the Committee, pp. 31–36, 43, 44, 49. President Jefferson, in his proclamation interdicting our harbors and waters to British armed vessels, issued immediately after the outrage, said:—"That no circumstance might be wanting to mark its character, it had been previously ascertained that the seamen demanded were native citizens of the United States." p. 6. This proclamation was countersigned by Mr. Madison, then Secretary of State. Mr. Madison, in his letter to Mr. Monroe, then the minister of the United States at London, instructing him to demand reparation of the British goverment, dwells upon the fact that the men were citizens of the United States; and Mr. Monroe, in his formal demand upon the British government, said:—"I have the honor to transmit you documents which will, I presume, satisfy you that they were American citizens." Correspondence between Mr. Madison, Mr. Monroe, and Mr. Canning, on the subject of the attack on the Chesapeake, pp. 6, 10, 27. All the above references are to the public documents printed by order of the House of Repre-

sentatives, at the first session of the tenth congress. It thus appears, not only that three of the first five presidents of the United States, two of them men who had taken as great part as any in framing our national policy and system of government, spoke of colored men as citizens of the United States; but that the government made the defence of their rights as citizens, a cause for putting the nation in a hostile attitude towards a foreign power.

We may also well allude in this connection to the proclamation issued by General Jackson, dated Mobile, September 21, 1814, addressed "to the free colored inhabitants of Louisiana," in which he says: — "Through a mistaken policy you have heretofore been deprived of a participation in the glorious struggle for national rights in which our country is engaged. This no longer shall exist. As sons of freedom, you are now called upon to defend our most inestimable blessing. As Americans, your country looks with confidence to her adopted children for a valorous support, as a faithful return for the advantages enjoyed under her mild and equitable government. On enrolling yourselves in companies, the major-general commanding will select officers for your government, from your white *fellow citizens*. Your non-commissioned officers will be appointed from among yourselves."

INTRODUCTION

BY

DR. J. H. VAN EVRIE.

This opinion of Chief Justice Taney and those of his eminent colleagues of the Supreme Court of the Republic, is an epoch in our civil history, which is doubtless destined in all future time to be a land-mark in American civilization.

The facts in the case are all very simple, distinct, common-place, and the conclusions from them plain and unavoidable; nevertheless, this decision, except the Declaration of National Independence in 1776, is the most momentous event that has ever occurred on this continent, and the results destined to flow from it can be second only in importance to those which have followed that memorable event. The Declaration of 1776 announced a truth the most stupendous that ever fell from mere mortal lips—the Dred Scott decision confirms a principle essential to the preservation and success of the former, and which otherwise would needs be but little better than "sounding brass or a tinkling cymbal." Unlike the homogeneous population of Europe, American society is made up of diverse races, each having its own specific wants and necessities, and therefore any social or political organism that is not in accord with these fundamental facts—these unchanging and unchangeable ordinances of the Eternal—must rest on false foundations, and work out evil only to all concerned.

The doctrine of 1776, that all (white) men "are created free and equal," is universally accepted and made the basis of all our institutions, State and National, and the relations of citizenship—the rights of the individual—in short, the *status* of the dominant race, is thus defined and fixed for ever.

But there have been doubts and uncertainties in regard to the negro. Indeed, many (perhaps most) American communities have latterly sought to include him in the ranks of citizenship, and force upon him the *status* of the superior race.

This confusion is now at an end, and the Supreme Court, in the Dred Scott decision, has defined the relations, and fixed the *status* of the subordinate race *forever*—for that decision is in accord with the natural relations of the races, and therefore can never perish. It is based on historical and existing facts, which are indisputable, and it is a necessary, indeed unavoidable inference, from these facts.

A few years after Columbus had discovered and planted a Spanish colony in the island of St. Domingo, there were some negroes (slaves) imported from Spain into the island, and they were found to be so superior to the natives as laborers on the Spanish plantations, that others were soon afterwards imported directly from Africa, and finally into all or nearly all of the Spanish possessions. The British colonies in the northern and temperate latitudes did not need this special class or kind of labor, but as they were in possession of vast territories, and labor of every kind needed for the conquest over these barren and boundless solitudes, they, too, imported

African negroes, and when the British dominion was overthrown, all the colonies had more or less of this negro element in their midst.

All these negroes or their progenitors, all ever brought to America in all the colonies on the continent or in the islands, Spanish, Portuguese, French and English, were in the same subordinate position, and sustained the same (slave) relation to the whites; and such a thing as the introduction of a "free" negro is totally unknown in the history of America.

Was there any other condition of these negroes anterior to the history of this continent? Probably not—at all events, history fails to record any such thing. In the entire past in all lands, whenever and wherever white men and negroes have been in juxtaposition, their relations—the mastery of the former and "slavery" of the latter—have been the same (substantially) as that which exists now at the South, and as they were when modern history first takes cognizance of them.

There were, doubtless, as there are now, modifications in regard to detail, but the great foundation principle, the subordination or "slavery" of this negro element was universal, and for two hundred years and upwards unquestioned in a single instance on this continent, or indeed any other. The various American communities legislated on the subject: they protected the "slave" from the vices or cruelty of the master, while they provided for the welfare of the latter and the general security of this species of property; but all this was in view of the existing fact, the natural relation and fundamental principle of mixed societies, the "slavery" of the negro. They regulated, but of course did not establish or institute this so-called slavery; for like the relations of the sexes, of parents and children, &c., it was inherent, pre-existing, and sprung spontaneously from the necessities of human society. The white man was superior—the negro was inferior—and in juxtaposition, society could only exist, and can only exist, by placing them in natural relation to each other, or by the social subordination, or so-called slavery of the negro.

This universal recognition of "slavery" as the natural relation of the races was the basis of the common law, of course, wherever the common law was itself recognized, and as this was the case in all the British colonies, it followed of necessity that "freedom," "free negroism," or legal equality of negroes, was the creature of the *lex loci* or municipal law. The "common law" is neither more nor less than common sense, and the principles of justice applied to the existing condition, or in conformity with the ordinary and universal usages of the people.

These negroes were different and subordinate beings—they were in a different and subordinate social position, when first known or seen by the colonists—their offspring followed the condition of the parents, and this relation to the whites was universally recognized, and therefore being the common usage or universal custom, it formed the basis of all common law decisions on the subject. Or, in other words, this relation—this social subordination, or so-called "slavery," did universally exist, and therefore in all cases where suits were brought, or the law appealed to, where negroes were in issue, the principles of common sense and justice were applied, in conformity with the universal usage. In some of the eastern colonies, there were doubtless exceptions, and indeed great confusion on this subject; but it is an historical fact that in most of the colonies there was no exception or departure from the common usage until the time or about the time of the great revolutionary movement in 1776, and the radical change of political institutions in the New World. The Spaniards, French, &c., it is supposed, were not "blessed" with the "common law," but this "slavery" was universally recognized as the natural position and real *status* of the negro in all their American possessions, and for two hundred years after their first introduction, no legal decision can be found in all America based on any other assumption.

Indeed, it is true, and a truth which any reflecting mind may readily understand, that were the new entirely isolated from the old world, no other conception of the negro would be possible. Our ideas are the results of our perceptions of external objects. The senses perceive and transmit their impressions to the brain, which compares them and determines their character independent of the will. The negro was brought here a "negro slave," a different and subordinate being, and in a different and subordinate social position, harmonising with his essential nature and the wants and welfare of the superior race; therefore the colonists, of themselves or by themselves, of course could form no other conception of him, or rather of the actual facts thus presented to them.

They might, it is true, conceive of modifications of this condition or regulations of this relation, of greater latitude to the negro, or restraint upon his master; but the modern idea of "freedom," that this different being was the *same* being as themselves, or this *subordinate* creature entitled to equality with themselves, would be a mental impossibility, as palpable as that of water running up hill, or of men standing on their heads instead of their feet. The American recognition of "slavery"—of the facts embodied in the negro being—was therefore universal throughout America, and among colonists, however separated in opinions, habits, and usages in other respects.

Nor was there the slightest change of opinions or modification of usages until the new ideas of 1776 dawned upon the world, and threatened new and startling changes in the whole frame-work of human society. As long as the colonies retained the system—the outward forms of the old political and social order, and recognized the sovereignty of the mother country, the rulers of England were not disposed to meddle with their domestic concerns, and therefore their relations to the negro element of their population, like every thing else, was left to their own control.

But the establishment of a new system on principles hitherto unrecognized among the statesmen of Europe, and which, if successful, would endanger the social order, as they understood it, impelled the British aristocracy of the day to make every effort possible, moral and material, to embarrass and break down institutions so alarming, and as they doubtless believed, so pregnant with mighty mischiefs to the future of society. So long as the colonists conformed to the general European system, or so long as there was no outward contradiction of American and British society, the relation of the whites to the negro element in their midst was never a subject of doubt or difficulty; and it is reasonable to conclude that if this contradiction had never happened—if the colonies had never thrown off European dominion, and the relations then existing between the white men of this republic and those of England had continued to this day, then we should never have had the slightest trouble in regard to negroes, and such a social monstrosity as a free negro would probably be unknown among us.

But the new notions which then sprung up in men's minds, and the new forms of political society that followed, and which placed the institutions of America in total and irreconcilable contradiction to those of the mother country, resulted in new combinations, and other and unheard of modes of hostility to the new order.

The idea of equal rights, or of natural equality, is as old as the race itself; for though there are slight differences in the intellectual as in the (natural) physical powers of individuals, all have the same wants, and therefore the sentiment of Democracy is inherent and everlasting in the very organism of the race. But this idea, or sentiment rather, was never before incorporated into the political institutions of mankind, and when it was made the practical and fundamental principle of the new system, it not only placed the institutions of America in direct hos-

tility to those of Europe, but it convinced the upholders of the latter that this hostility could never cease until one or the other was overthrown.

Fortunately, too, for the friends of monarchy and privilege, materials existed which only needed to be adroitly managed to strike a felon and perhaps deadly blow at the new system, without the risks of war, or even those ordinarily dependent on failure of any kind; and which, if successful at all, would be wholly so, for it was at the centre, the heart, the very sources of life itself, that the blow would be aimed. One-sixth of our population were negroes—a subordinate social element—which, incorporated and amalgamated with the white citizenship, would so debase and deteriorate the latter, that equality would be undermined, lost and annihilated altogether, and Democracy rendered impracticable and impossible for ever.

Will any one doubt this, or venture to say that we might incorporate the negro element of our population with the white citizenship, and yet preserve our institutions, the purity of our principles, the life of our democratic system? If there are such, they have only to cast their eyes to the populations south of us to witness the ruin, the degradation, the punishment, misery, and even death that follows all such attempts to incorporate different races into the same system; and the negro element being still further removed from us, would, were the British or abolition theory reduced to practice, bring upon us only a more rapid and more fearful punishment.

It is not to be supposed that English and European statesmen understood this matter, in what way or manner the ruin and overthrow of the new ideas they so dreaded could be accomplished by means of this negro element of our population, but instinct, if not reason, taught them that it might be decisive and overwhelming.

It is, indeed, probable that in the first instance they merely resorted to that traditional maxim of the British aristocracy, divide and conquer, which has come down from the old Norman nobility, and which has been and is now the leading principle of British policy.

Here was one-sixth of the population shut out from all the chances and enjoyments of political and social intercourse, and which, though they were unable to appeal to it, or to use it as a national instrument for attacking the republic in the ordinary way, *might* be wielded in some mode or form, perhaps equally or even more effective, though that mode or form was indefinite and impalpable to the British mind. But be this as it may, or whatever may have been the reasonings of the enemies of democratic institutions, the motives and the results arrived at admit of no doubt whatever. Their system, if it may be called thus, rested on wrong, on falsehood, on the ignorance, poverty, and degradation of the masses—ours on the principles of eternal truth, on the natural and inalienable right of all (white) men to the same political privileges and legal rights; and the instinctive hostility of opposing systems, the innate and irreconcilable conflict of hostile principles, the necessary warfare of truth and falsehood, of right and wrong, of light and darkness, impelled them, and now impels them, and always will impel them, to make war upon us openly or secretly, in the battle-field, or the still more dangerous field of opinion, until one or the other is overthrown, until Democracy and Democratic institutions are the recognized order of European society, or corrupted by European opinion and enfeebled by monarchical influences, we adopt their dogma of a single race, and in vain and impious efforts to reduce it to practice, collapse into the ruin, degradation, and social destruction of our neighbors, the heterogeneous and amalgamated hordes of Mexico, Central America, &c.

This instinctive hostility, blind as it may have been at first, therefore impelled the enemies of liberty to avail themselves of this negro element for the overthrow of liberty. British and European writers set up the theory or dogma of a single

race; that the negro, Indian, &c., of America had the same nature, the same wants, and therefore the same rights as white men; and the British government, under the younger Pitt, followed close upon the heels of these writers to reduce the dogma to practice. They began the warfare by an attack on the African "slave" trade; and under the lead of Wilberforce, perhaps the sleekest and most adroit hypocrite the world ever saw, they enlisted nearly the entire moral and religious sentiment of England, and with the close connection and almost absolute submission of the same classes among ourselves to British opinion, they obtained at the very beginning the support and sympathy of the religious world in behalf of a cause not merely founded on falsehood, but which, if successful, would work out evils to human kind and to all concerned so stupendous as to be beyond the possibilities of our language to measure or to express them. Wilberforce was a narrow-minded bigot, of the most bigoted school of British Toryism, and in his long parliamentary career, probably never missed a vote when new burthens were to be imposed upon the people, or any chance offered for strengthening the tyranny under which the millions groped their way through a dark and cheerless existence; and the simple fact that such a man was the leader and champion of the cause of "humanity" and "liberty," was itself an unmistakable proof of its falsehood. But here, too, as in the subsequent phases of the mighty imposture, multitudes of good, honest, and well-meaning people labored under a misconception. The African "slave" trade, when isolated or viewed by itself, *seemed*, and perhaps was in many respects, cruel and inhuman, and therefore it was natural that moral and religious people were anxious to put it down and interdict it altogether; but while this was the professed object of the British government, it was, in fact, a mere incident in the British (negro) policy. That policy is now, if it was not then, perfectly clear and distinct. It was, and it is, to reduce to practice the teachings of British and monarchical writers, to equalize races—to "abolish" the distinctions that separate negroes from white men—in short, to carry out in practice the dogma or doctrine of a single race, and putting down the "slave" trade was only an incident, a single step in the monstrous programme. There were other causes also in operation at the time which compelled the British government to make its anti-"slavery" or free negro efforts in America one of the most prominent features of its general policy. The teachings of Voltaire and the Encyclopediasts had borne their fruits, and the long-suffering and voiceless millions in France had risen with a strength as terrible as it was irresistible, sweeping away kings and nobles, and every form of wrong and oppression almost in a single day; and the spirit thus aroused threatened to spread over all Europe, and to accomplish the same results in every nation. The British aristocracy then became the rallying point for the enemies of the people—the centre of hope, the very sheet anchor of the old oppressions, which for centuries had crushed and brutalized the millions, and this pretended love of liberty in America served to blind and delude the masses in England, and thus to reconcile them to the warfare carried on against liberty in Europe. But the five hundred millions wrung from the sweat and toil and degradation and misery of English laborers, to put down the "slave trade," and give liberty to negroes in America, was expended for crushing out liberty as absolutely, though not so directly, as the three thousand millions expended in Europe. Indeed it was infinitely worse and infinitely more atrocious in the results worked out, for to simply crush out the rights of the people in Europe was kindness and mercy in comparison with the evils dependent on the success of their "free" negro policy in America.

With our mental habits borrowed from Europe, and the almost abject submission to British opinion, it is to be expected that these stupendous efforts to delude

us into the adoption of British "anti-slavery" ideas, and the support of their "anti-slavery" policy, would be measurably successful. On a hasty and superficial view, it seemed to be the cause of morality and religion, and therefore the Church, the ministry, the entire religious body among us became infected, more or less, with this moral leprosy—a leprosy a thousand times over more fatal, and, when disclosed in its real character, more hideous than ever cursed Jew or Syrian in the days of old. It pervaded all classes and poisoned all minds, and, strangest of all, it perverted the Judiciary; and though lawyers as a class are usually literal and matter-of-fact in their mental habits, they have been led by this world-wide delusion to utterly ignore fact, and distort reason itself into the grossest folly. An English judge had decided that by the common law all white men were free in England, and therefore discharged a negro from the control of his master, who had brought him to London! This English precedent, like most British precedents, was accepted by our Courts as the rule, unquestioned and unquestionable, and therefore "slavery" became with American jurists, as well as politicians, the creature of the *lex loci*, without name or habitation in the world, except that given it by municipal law; and yet no such law could be found, or can now be found in all America! And this ruling of Chief Justice Mansfield, until quite recently, has been universally admitted. Mr. Clay, Mr. Webster, Colonel Benton—all the great lawyers and eminent legislators, have assumed that "slavery," the social subordination of the negro, the natural relation of the diverse elements that compose our population, was established by municipal law, and therefore could have no existence beyond the sphere of such law!

Such had been the British precedent, and their opinions, already perverted by British and European writers. They never doubted its soundness, though it obviously has no foundation of fact, and therefore involves a palpable absurdity. For many years but little mischief attended the false theories and absurd assumptions prevailing on the subject as far as these States were concerned, though the practical anti-"slavery" policy of England has demoralized and destroyed the countries south of our limits.

But a time has now come when this falsehood and folly can be indulged no longer without carrying with it infinite danger—indeed, the certainty of destruction to the Union itself—in fact, the least of evils, in comparison with the practical success of the British or anti-slavery theory. The negro element has expanded into four millions—every one knows that it must remain here forever—it is rapidly increasing, and the time, therefore, is at hand when the false theories so long imposed on our people must be exploded, and the true *status* of this race fixed beyond question. It therefore was no accident, still less was it by management of any kind, that this Dred Scott case was brought before the Supreme Court for a final decision, by the highest legal authority in the Republic or on the continent. The facts in the case, as stated elsewhere, were perfectly simple, and the inference from these facts unavoidable. A master had carried his "slave" (Dred Scott) into the federal Territories, and as there was no local or municipal law *establishing* "slavery" in these Territories, according to the rule laid down by the English chief justice, and so long and disgracefully submitted to by American courts, the "slave" was entitled to freedom! But the Supreme Court, confining itself to the actual, historical and material facts involved, reversed the foreign and monarchical rule. The progenitors of this negro (Dred Scott) were brought here "slaves;" the offspring followed the condition of the parents—there was no local law or municipal regulation altering this condition in the present instance—therefore Dred Scott remained in that condition, a so-called slave.

Could anything be clearer, more logical or truthful, than this decision? Of

course, slavery or freedom has nothing to do with the matter. *They* are terms of comparison, having reference to conditions of our own race, and are utter perversions, misapplications, absurdities, when applied to negroes; but as we have no other terms familiar to the common mind, we must, for the present at least, continue to employ them in this connection. The court simply called on the other side to show any law, if it could, altering the *status* of this negro, and as that did not exist, or was not forthcoming, of course it decided that Dred Scott's condition remained the same as his progenitors', and therefore directed him to be returned to his master. But the anti-"slavery zealots insist that the "Missouri Compromise" was such law; that Congress, having enacted a law forbidding the introduction of negro "slaves," that those carried into the Territory became *ipso facto* free men. This is simply absurd, so far as the *status* of the negro is concerned, whatever may be the political question involved. If Congress had power to exclude "slave" owners from the Territories, it no more followed that the "slave" should become a "free man" than that his skin should become white; but the court also held that as this was a federation of States, Congress had no power to exclude any class of citizens, and therefore that the Missouri compromise was unconstitutional.

At last, then, and in conclusion, we have reached the culminating point of the wildest, the most senseless, the most disgusting, and withal the most dangerous delusion that ever afflicted an intelligent people, or threatened to destroy the peace, order, and safety of human society.

Whatever the course or the legislation of sovereign States, henceforth and forever the *status* of the negro, his relation to the white citizens, and the rights of the latter in respect to "slave" property, are now clearly defined within the Federal jurisdiction. And this decision must be accepted and sustained by the northern masses, or there must be disunion and dismemberment of the Union; for the States and people having this negro element in their midst, cannot, even if they would, consent to any compromise in this respect, and therefore if the northern people, led astray by the agents and dupes of the enemies of Democracy, refuse to abide by it, there is for the south no alternative but disunion and the establishment of a new confederacy in conformity with the wants and necessities of southern society. It remains, then, for the honest and patriotic citizens of the North who would avoid this calamity of disunion, and save for their offspring the glorious institutions won by the blood and sacrifices of their fathers, to abandon the false mental habits imposed on them by the enemies of these institutions, and, accepting the fixed and immutable truths of the Dred Scott decision, to regard as enemies to the peace of the country, and indeed to the safety of society, all those who, under the pretence of negro liberty, would render liberty for the white man impossible.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1856.

DRED SCOTT

versus

JOHN F. A. SANDFORD.

DRED SCOTT, PLAINTIFF IN ERROR, *v.* JOHN F. A. SANDFORD.

I.

1. Upon a writ of error to a Circuit Court of the United States, the transcript of the record of all the proceedings in the case is brought before this court, and is open to its inspection and revision.

2. When a plea to the jurisdiction, in abatement, is overruled by the court upon demurrer, and the defendant pleads in bar, and upon these pleas the final judgment of the court is in his favor—if the plaintiff brings a writ of error, the judgment of the court upon the plea in abatement is before this court, although it was in favor of the plaintiff—and if the court erred in overruling it, the judgment must be reversed, and a mandate issued to the Circuit Court to dismiss the case for want of jurisdiction.

3. In the Circuit Courts of the United States, the record must show that the case is one in which by the Constitution and laws of the United States, the court had jurisdiction—and if this does not appear, and the court gives judgment either for plaintiff or defendant, it is error, and the judgment must be reversed by this court—and the parties cannot by consent waive the objection to the jurisdiction of the Circuit Court.

4. A free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a "citizen" within the meaning of the Constitution of the United States.

5. When the Constitution was adopted, they were not regarded in any of the States as members of the community which constituted the State, and were not numbered among its "people or citizens." Consequently, the special rights and immunities guaranteed to citizens do not apply to them. And not being "citizens" within the meaning of the Constitution, they are not entitled to sue in that character in a court of the United States, and the Circuit Court has not jurisdiction in such a suit.

6. The only two clauses in the Constitution which point to this race, treat them as persons whom it was morally lawful to deal in as articles of property and to hold as slaves.

7. Since the adoption of the Constitution of the United States, no state can by any subsequent law make a foreigner or any other description of persons citizens of the United States, nor entitle them to the rights and privileges secured to citizens by that instrument.

8. A State, by its laws passed since the adoption of the Constitution, may put a foreigner or any other description of persons upon a footing with its own citizens, as to all the rights and privileges enjoyed by them within its dominion, and by its laws. But that will not make him a citizen of the United States, nor entitle him to sue in its courts, nor to any of the privileges and immunities of a citizen in another State.

9. The change in public opinion and feeling in relation to the African race, which has taken place since the adoption of the Constitution, cannot change its construction and meaning, and it must be construed and administered now according to its true meaning and intention when it was formed and adopted.

10. The plaintiff having admitted, by his demurrer to the plea in abatement, that his ancestors were imported from Africa and sold as slaves, he is not a citizen of the State of Missouri according to the Constitution of the United States, and was not entitled to sue in that character in the Circuit Court.

11. This being the case, the judgment of the court below, in favor of the plaintiff on the plea in abatement, was erroneous.

II.

1. But if the plea in abatement is not brought up by this writ of error, the objection to the citizenship of the plaintiff is still apparent on the record, as he himself, in making out his case, states that he is of African descent, was born a slave, and claims that he and his family became entitled to freedom by being taken by their owner to reside in a territory where slavery is prohibited by act of Congress—and that, in addition to this claim, he himself became entitled to freedom by being taken to Rock Island, in the State of Illinois—and being free when he was brought back to Missouri, he was by the laws of that State a citizen.

2. If, therefore, the facts he states do not give him or his family a right to freedom, the plaintiff is still a slave, and not entitled to sue as a "citizen," and the judgment of the Circuit Court was erroneous on that ground also, without any reference to the plea in abatement.

3. The Circuit Court can give no judgment for plaintiff or defendant in a case where it has not jurisdiction, no matter whether there be a plea in abatement or not. And unless it appears upon the face of the record, when brought here by writ of error, that the Circuit Court had jurisdiction, the judgment must be reversed.

The case of Capron v. Van Noorden (2 Cranch, 126) examined, and the principles thereby decided, reaffirmed.

4. When the record, as brought here by writ of error, does not show that the Circuit Court had jurisdiction, this court has jurisdiction to revise and correct the error, like any other error in the court below. It does not and cannot dismiss the case for want of jurisdiction here; for that would leave the erroneous judgment of the court below in full force, and the party injured without remedy. But it must reverse the judgment, and, as in any other case of reversal, send a mandate to the Circuit Court to conform its judgment to the opinion of this court.

5. The difference of the jurisdiction in this court in the cases of writs of error to State courts and to Circuit Courts of the United States, pointed out; and the mistakes made as to the jurisdiction of this court in the latter case, by confounding it with its limited jurisdiction in the former.

6. If the court reverses a judgment upon the ground that it appears by a particular part of the record that the Circuit Court had not jurisdiction, it does not take away the jurisdiction of this court to examine into and correct, by a reversal of the judgment, any other errors, either as to the jurisdiction or any other matter, where it appears from other parts of the record that the Circuit Court had fallen into error. On the contrary, it is the daily and familiar practice of this court to reverse on several grounds, where more than one error appears to have been committed. And the error of a Circuit Court in its jurisdiction stands on the same ground, and is to be treated in the same manner as any other error upon which its judgment is founded.

7. The decision, therefore, that the judgment of the Circuit Court upon the plea in abatement is erroneous, is no reason why the alleged error apparent in the exception should not also be examined, and the judgment reversed on that ground also, if it discloses a want of jurisdiction in the Circuit Court.

It is often the duty of this court, after having decided that a particular decision of the Circuit Court was erroneous, to examine into other alleged errors, and to correct them if they are found to exist. And this has been uniformly done by this court, when the questions are in any degree connected with the controversy, and the silence of the court might create doubts which would lead to further and useless litigation.

III.

1. The facts upon which the plaintiff relies did not give him his freedom, and make him a citizen of Missouri.

2. The clause in the Constitution authorising Congress to make all needful rules and regulations for the government of the territory and other property of the United States, applies only to territory within the chartered limits of some one of the States when they were colonies of Great Britain, and which was surrendered by the British Government to the old Confederation of the States, in the treaty of peace. It does not apply to territory acquired by the present Federal Government, by treaty or conquest, from a foreign nation.

The case of the American and Ocean Insurance Companies v. Canter (1 Peters, 511) referred to and examined, showing that the decision in this case is not in conflict with that opinion, and that the court did not, in the case referred to, decide upon the construction of the clause of the Constitution above mentioned, because the case before them did not make it necessary to decide the question.

3. The United States, under the present Constitution, cannot acquire territory to be held as a colony, to be governed at its will and pleasure. But it may acquire territory which, at the time, has not a population that fits it to become a State, and may govern it as a Territory until it has a population which, in the judgment of Congress, entitles it to be admitted as a State of the Union.

4. During the time it remains a Territory, Congress may legislate over it within the scope of its constitutional powers in relation to citizens of the United States—and may establish a Territorial Government—and the form of this local Government must be regulated by the discretion of Congress, but with powers not exceeding those which Congress itself, by the Constitution, is authorised to exercise over citizens of the United States, in respect to their rights of persons or rights of property.

IV.

1. The territory thus acquired, is acquired by the people of the United States for their common and equal benefit, through their agent and trustee, the Federal Government. Congress can exercise no power over the rights of persons or property of a citizen in the Territory which is prohibited by the Constitution. The Government and the citizen, whenever the Territory is open to settlement, both enter it with their respective rights defined and limited by the Constitution.

2. Congress have no right to prohibit the citizens of any particular State or States from taking up their home there, while it permits citizens of other States to do so. Nor has it a right to give privileges to one class of citizens which it refuses to another. The territory is acquired for their equal and common benefit—and if open to any, it must be open to all upon equal and the same terms.

3. Every citizen has a right to take with him into the Territory any article of property which the Constitution of the United States recognises as property.

4. The Constitution of the United States recognises slaves as property, and pledges the Federal Government to protect it. And Congress cannot exercise any more authority over property of that description than it may constitutionally exercise over property of any other kind.

5. The act of Congress, therefore, prohibiting a citizen of the United States from taking with him his slaves when he removes to the Territory in question to reside, is an exercise of authority over private property which is not warranted by the Constitution—and the removal of the plaintiff, by his owner, to that Territory, gave him no title to freedom.

V.

1. The plaintiff himself acquired no title to freedom by being taken, by his owner, to Rock Island, in Illinois, and brought back to Missouri. This court has heretofore decided that the *status* or condition of a person of African descent depended on the laws of the State in which he resided.

2. It has been settled by the decisions of the highest court in Missouri, that by the laws of that State, a slave does not become entitled to his freedom, where the owner takes him to reside in a State where slavery is not permitted, and afterwards brings him back to Missouri.

Conclusion. It follows that it is apparent upon the record that the court below erred in its judgment on the plea in abatement, and also erred in giving judgment for the defendant, when the exception shows that the plaintiff was not a citizen of the United States. And as the Circuit Court had no jurisdiction, either in the case stated in the plea in abatement, or in the one stated in the exception, its judgment in favor of the defendant is erroneous, and must be reversed.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the district of Missouri.

It was an action of trespass *vi et armis* instituted in the Circuit Court by Scott against Sandford.

Prior to the institution of the present suit, an action was brought by Scott for his freedom in the Circuit Court of St. Louis county, (State court,) where there was a verdict and judgment in his favor. On a writ of error to the Supreme Court of the State, the judgment below was reversed, and the case remanded to the Circuit Court, where it was continued to await the decision of the case now in question.

The declaration of Scott contained three counts: one, that Sandford had assaulted the plaintiff; one, that he had assaulted Harriet Scott, his wife; and one, that he had assaulted Eliza Scott and Lizzie Scott, his children.

Sandford appeared, and filed the following plea:

DRED SCOTT
v.
JOHN F. A. SANDFORD.
} *Plea to the Jurisdiction of the Court.*

APRIL TERM, 1854.

And the said John F. A. Sandford, in his own proper person, comes and says that this court ought not to have or take further cognizance of the action aforesaid, because he says that said cause of action, and each and every of them, (if any such have accrued to the said Dred Scott,) accrued to the said Dred Scott out of the jurisdiction of this court, and exclusively within the jurisdiction of the courts of the State of Missouri, for that, to wit: the said plaintiff, Dred Scott, is not a citizen of the State of Missouri, as alleged in his declaration, because he is a negro of African descent; his ancestors were of pure African blood, and were brought into this country and sold as negro slaves, and this the said Sandford is ready to verify. Wherefore he prays judgment whether this court can or will take further cognizance of the action aforesaid.

JOHN F. A. SANDFORD.

To this plea there was a demurrer in the usual form, which was argued in April, 1854, when the court gave judgment that the demurrer should be sustained.

In May, 1854, the defendant, in pursuance of an agreement between counsel, and with the leave of the court, pleaded in bar of the action:

1. Not guilty.

2. That the plaintiff was a negro slave, the lawful property of the defendant, and, as such, the defendant gently laid his hands upon him, and thereby had only restrained him, as the defendant had a right to do.

3. That with respect to the wife and daughters of the plaintiff, in the second and third counts of the declaration mentioned, the defendant had, as to them, only acted in the same manner, and in virtue of the same legal right.

In the first of these pleas, the plaintiff joined issue; and to the second and third filed replications alleging that the defendant, of his own wrong and without the cause in his second and third pleas alleged, committed the trespasses, &c.

The counsel then filed the following agreed statement of facts, viz:

In the year 1834, the plaintiff was a negro slave belonging to Dr. Emerson, who was a surgeon in the army of the United States. In that year, 1834, said Dr. Emerson took the plaintiff from the State of Missouri to the military post at Rock Island in the State of Illinois, and held him there as a slave until the month of April or May, 1836. At the time last mentioned, said Dr. Emerson removed the plaintiff from said military post at Rock Island to the military post at Fort Snelling, situate on the west bank of the Mississippi river, in the Territory known as Upper Louisiana, acquired by the United States of France, and situate north of the latitude of thirty-six degrees thirty minutes north, and north of the State of Missouri. Said Dr. Emerson held the plaintiff in slavery at said Fort Snelling, from said last-mentioned date until the year 1838.

In the year 1835, Harriet who is named in the second count of the plaintiff's declaration, was the negro slave of Major Taliaferro, who belonged to the army of the United States. In that year, 1835, said Major Taliaferro took said Harriet to said Fort Snelling, a military post, situated as hereinbefore stated, and kept her there as a slave until the year 1836, and then sold and delivered her as a slave at said Fort Snelling unto the said Dr. Emerson hereinbefore named. Said Dr. Emerson held said Harriet in slavery at said Fort Snelling until the year 1838.

In the year 1836, the plaintiff and said Harriet, at said Fort Snelling, with the consent of said Dr. Emerson, who then claimed to be their master and owner, intermarried, and took each other for husband and wife. Eliza and Lizzie, named in the third count of the plaintiff's declaration, are the fruit of that marriage. Eliza is about fourteen years old, and was born on board the steamboat Gipsey, north of the north line of the State of Missouri, and upon the river Mississippi. Lizzie is about seven years old, and was born in the State of Missouri, at the military post called Jefferson Barracks.

In the year 1838, said Dr. Emerson removed the plaintiff and said Harriet and their said daughter Eliza, from said Fort Snelling to the State of Missouri, where they have ever since resided.

Before the commencement of this suit, said Dr. Emerson sold and conveyed the plaintiff, said Harriet, Eliza, and Lizzie, to the defendant, as slaves, and the defendant has ever since claimed to hold them and each of them as slaves.

At the times mentioned in the plaintiff's declaration, the defendant claiming to be owner as aforesaid, laid his hands upon said plaintiff, Harriet, Eliza and Lizzie, and imprisoned them, doing in this respect, however, no more than what he might lawfully do if they were of right his slaves at such times.

Further proof may be given on the trial for either party.

It is agreed that Dred Scott brought suit for his freedom in the Circuit Court of St. Louis county; that there was a verdict and judgment in his favor; that on a writ of error to the Supreme Court, the judgment below was reversed, and the same remanded to the Circuit Court, where it has been continued to await the decision of this case.

In May 1854, the cause went before a jury, who found the following verdict, viz: "As to the first issue joined in this case, we of the jury find the defendant not guilty; and as to the issue secondly above joined, we of the jury find that before and at the time when, &c., in the first count mentioned, the said Dred Scott was a negro slave, the lawful property of the defendant; and as to the issue thirdly above joined, we, the jury, find that before and at the time when, &c., in the second and third counts mentioned, the said Harriet, wife of said Dred Scott, and Eliza and Lizzie, the daughters of the said Dred Scott, were negro slaves, the lawful property of the defendant."

Whereupon the court gave judgment for the defendant.

After an ineffectual motion for a new trial, the plaintiff filed the following bill of exceptions.

On the trial of this cause by the jury, the plaintiff, to maintain the issues on his part, read to the jury the following agreed statement of facts, (see agreement above.) No further testimony was given to the jury by either party. Thereupon the plaintiff moved the court to give to the jury the following instruction, viz:

"That upon the facts agreed to by the parties, they ought to find for the plantiff. The court refused to give such instruction to the jury, and the plaintiff, to such refusal, then and there duly excepted."

The court then gave the following instruction to the jury, on motion of the defendant:

"The jury are instructed, that upon the facts in this case, the law is with the defendant" The plaintiff excepted to this instruction.

Upon these exceptions, the case came up to this court.

It was argued at December term, 1855, and ordered to be reargued at the present term.

It was now argued by *Mr. Blair* and *Mr. G. F. Curtis* for the plaintiff in error, and by *Mr. Geyer* and *Mr. Johnson* for the defendant in error.

Mr. Chief Justice TANEY delivered the opinion of the court.

This case has been twice argued. After the argument of the last term, differences of opinion were found to exist among the members of the court; and as the questions in controversy are of the highest importance, and the court was at that time much pressed by the ordinary business of the term, it was deemed advisable to continue the case, and direct a reargument on some of the points, in order that we might have an opportunity of giving to the whole subject a more deliberate consideration. It has accordingly been again argued by counsel, and considered by the court; and I now proceed to deliver its opinion.

There are two leading questions presented by the record:

1. Had the Circuit Court of the United States jurisdiction to hear and determine the case between these parties? And

2. If it had jurisdiction, is the judgment it has given erroneous or not?

The plaintiff in error, who was also the plaintiff in the court below, was, with his wife and children, held as slaves by the defendant, in the state of Missouri; and he brought this action in the circuit court of the United States for that district, to assert the title of himself and his family to freedom.

The declaration is in the form usually adopted in that State to try questions of this description, and contains the averment necessary to give the court jurisdiction; that he and the defendant are citizens of different States; that is, that he is a citizen of Missouri, and the defendant a citizen of New York.

The defendant pleaded in abatement to the jurisdiction of the court, that the plaintiff was not a citizen of the State of Missouri, as alleged in his declaration, being a negro of African descent, whose ancestors were of pure African blood, and who were brought into this country and sold as slaves.

To this plea the plaintiff demurred, and the defendant joined in demurrer. The court overruled the plea, and gave judgment that the defendant should answer over. And he therefore put in sundry pleas in bar, upon which issues were joined; and at the trial the verdict and judgment were in his favor. Whereupon the plaintiff brought this writ of error.

Before we speak of the pleas in bar, it will be proper to dispose of the questions which have arisen on the plea in abatement.

That plea denies the right of the plaintiff to sue in a court of the United States, for the reasons therein stated.

If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous and must be reversed.

It is suggested, however, that this plea is not before us; and that as the judgment in the court below on this plea was in favor of the plaintiff, he does not seek to reverse it, or bring it before the court for revision by his writ of error; and also that the defendant waived this defence by pleading over, and thereby admitted the jurisdiction of the court.

But in making this objection, we think the peculiar and limited jurisdiction of courts of the United States has not been adverted to. This peculiar and limited jurisdiction has made it necessary, in these courts, to adopt different rules and principles of pleading, so far as jurisdiction is concerned, from those which regulate courts of common law in England, and in the different states of the Union which have adopted the common-law rules.

In these last-mentioned courts, where their character and rank are analogous to that of a Circuit Court of the United States; in other words, where they are what the law terms courts of general jurisdiction; they are presumed to have jurisdiction, unless the contrary appears. No averment in the pleadings of the plaintiff is necessary, in order to give jurisdiction. If the defendant objects to it, he must plead

it specially, and unless the fact on which he relies is found to be true by a jury, or admitted to be true by the plaintiff, the jurisdiction cannot be disputed in an appellate court.

Now, it is not necessary to inquire whether in courts of that description a party who pleads over in bar, when a plea to the jurisdiction has been ruled against him, does or does not waive his plea; nor whether upon a judgment in his favor on the pleas in bar, and a writ of error brought by the plaintiff, the question upon the plea in abatement would be open for revision in the appellate court. Cases that may have been decided in such courts, or rules that may have been laid down by common-law pleaders, can have no influence in the decision in this court. Because, under the Constitution and laws of the United States, the rules which govern the pleadings in its courts, in questions of jurisdiction, stand on different principles and are regulated by different laws.

This difference arises, as we have said, from the peculiar character of the Government of the United States. For although it is sovereign and supreme in its appropriate sphere of action, yet it does not possess all the powers which usually belong to the sovereignty of a nation. Certain specified powers, enumerated in the Constitution, have been conferred upon it; and neither the legislative, executive, nor judicial departments of the Government can lawfully exercise any authority beyond the limits marked out by the Constitution. And in regulating the judicial department, the cases in which the courts of the United States shall have jurisdiction are particularly and specifically enumerated and defined; and they are not authorized to take cognizance of any case which does not come within the description therein specified. Hence, when a plaintiff sues in a court of the United States, it is necessary that he should show, in his pleadings, that the suit he brings is within the jurisdiction of the court, and that he is entitled to sue there. And if he omits to do this, and should, by any oversight of the Circuit Court, obtain a judgment in his favor, the judgment would be reversed in the appellate court for want of jurisdiction in the court below. The jurisdiction would not be presumed, as in the case of a common-law English or State court, unless the contrary appeared. But the record, when it comes before the appellate court, must show, affirmatively, that the inferior court had authority, under the Constitution, to hear and determine the case. And if the plaintiff claims a right to sue in a Circuit Court of the United States, under that provision of the Constitution which gives jurisdiction in controversies between citizens of different States, he must distinctly aver in his pleadings that they are citizens of different States; and he cannot maintain his suit without showing that fact in the pleadings.

This point was decided in the case of Bingham *v.* Cabot, (in 3 Dall., 382), and ever since adhered to by the court. And in Jackson *v.* Ashton (8 Pet., 148), it was held that the objection to which it was open could not be waived by the opposite party, because consent of parties could not give jurisdiction.

It is needless to accumulate cases on this subject. Those already referred to, and the cases of Capron *v.* Van Noorden, (in 2 Cr., 126), and Montalet *v.* Murray, (4 Cr., 46), are sufficient to show the rule of which we have spoken. The case of Capron *v.* Van Noorden strikingly illustrates the difference between a common-law court and a court of the United States.

If, however, the fact of citizenship is averred in the declaration, and the defendant does not deny it, and put it in issue by plea in abatement, he cannot offer evidence at the trial to disprove it, and consequently cannot avail himself of the objection in the appellate court, unless the defect should be apparent in some other part of the record. For if there is no plea in abatement, and the want of jurisdiction does not appear in any other part of the transcript brought up by the writ of error, the undisputed averment of citizenship in the declaration must be taken in this court to be true. In this case, the citizenship is averred, but it is denied by the defendant in the manner required by the rules of pleading, and the fact upon which the denial is based is admitted by the demurrer. And, if the plea and demurrer, and judgment of the court below upon it, are before us upon this record, the question to be decided is, whether the facts stated in the plea are sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States.

We think they are before us. The plea in abatement and the judgment of the court upon it, are a part of the judicial proceedings in the Circuit Court, and are there recorded as such; and a writ of error always brings up to the superior court the whole record of the proceedings in the court below. And in the case of the United States *v.* Smith, (11 Wheat., 172,) this court said, that the case being brought

up by writ of error, the whole record was under the consideration of this court. And this being the case in the present instance, the plea in abatement is necessarily under consideration; and it becomes, therefore, our duty to decide whether the facts stated in the plea are or are not sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States.

This is certainly a very serious question, and one that now for the first time has been brought for decision before this court. But it is brought here by those who have a right to bring it, and it is our duty to meet it and decide it.

The question is simply this: Can a negro whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights and privileges and immunities guarantied to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.

It will be observed, that the plea applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country, and sold and held as slaves. The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States. And this being the only matter in dispute on the pleadings, the court must be understood as speaking in this opinion of that class only, that is, of those persons who are the descendants of Africans who were imported into this country, and sold as slaves.

The situation of this population was altogether unlike that of the Indian race. The latter, it is true, formed no part of the colonial communities, and never amalgamated with them in social connections or in government. But although they were uncivilized, they were yet a free and independent people, associated together in nations or tribes, and governed by their own laws. Many of these political communities were situated in territories to which the white race claimed the ultimate right of dominion. But that claim was acknowledged to be subject to the right of the Indians to occupy it as long as they thought proper, and neither the English nor colonial Governments claimed or exercised any dominion over the tribe or nation by whom it was occupied, nor claimed the right to the possession of the territory, until the tribe or nation consented to cede it. These Indian Governments were regarded and treated as foreign Governments, as much so as if an ocean had separated the red man from the white; and their freedom has constantly been acknowledged, from the time of the first emigration to the English colonies to the present day, by the different Governments which succeeded each other. Treaties have been negotiated with them, and their alliance sought for in war; and the people who compose these Indian political communities have always been treated as foreigners not living under our Government. It is true that the course of events has brought the Indian tribes within the limits of the United States under subjection to the white race; and it has been found necessary, for their sake as well as our own, to regard them as in a state of pupilage, and to legislate to a certain extent over them and the territory they occupy. But they may, without doubt, like the subjects of any other foreign Government, be naturalized by the authority of Congress, and become citizens of a State, and of the United States; and if an individual should leave his nation or tribe, and take up his abode among the white population, he would be entitled to all the rights and privileges which would belong to an emigrant from any other foreign people.

We proceed to examine the case as presented by the pleadings.

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated

or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them.

It is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to the political or law-making power; to those who formed the sovereignty and framed the Constitution. The duty of the court is, to interpret the instrument they have framed, with the best lights we can obtain on the subject, and to administer it as we find it, according to its true intent and meaning when it was adopted.

In discussing this question, we must not confound the rights of citizenship which a State may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights. But this character of course was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. The Constitution has conferred on Congress the right to establish an uniform rule of naturalization, and this right is evidently exclusive, and has always been held by this court to be so. Consequently, no State, since the adoption of the Constitution, can by naturalizing an alien invest him with the rights and privileges secured to a citizen of a State under the Federal Government, although, so far as the State alone was concerned, he would undoubtedly be entitled to the rights of a citizen, and clothed with all the rights and immunities which the Constitution and laws of the State attached to that character.

It is very clear, therefore, that no State can, by any act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it.

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent? Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts.

It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guarantied to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and

separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.

It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the governments and institutions of the thirteen colonies, when they separated from Great Britain and formed new sovereignties, and took their places in the family of independent nations. We must enquire who, at that time, were recognized as the people or citizens of a State, whose rights and liberties had been outraged by the English Government; and who declared their independence, and assumed the powers of Government to defend their rights by force of arms.

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

It is difficult at this day to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.

They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion.

And in no nation was this opinion more firmly fixed or more uniformly acted upon than by the English Government and English people. They not only seized them on the coast of Africa, and sold them or held them in slavery for their own use; but they took them as ordinary articles of merchandise to every country where they could make a profit on them, and were far more extensively engaged in this commerce, than any other nation in the world.

The opinion thus entertained and acted upon in England was naturally impressed upon the colonies they founded on this side of the Atlantic. And, accordingly, a negro of the African race was regarded by them as an article of property, and held, and bought and sold as such, in every one of the thirteen colonies which united in the Declaration of Independence, and afterwards formed the Constitution of the United States. The slaves were more or less numerous in the different colonies, as slave labor was found more or less profitable. But no one seems to have doubted the correctness of the prevailing opinion of the time.

The legislation of the different colonies furnishes positive and indisputable proof of this fact.

It would be tedious, in this opinion, to enumerate the various laws they passed upon this subject. It will be sufficient, as a sample of the legislation which then generally prevailed throughout the British colonies, to give the laws of two of them; one being still a large slaveholding State, and the other the first State in which slavery ceased to exist.

The province of Maryland, in 1717, (ch. 13, s. 5,) passed a law declaring "that if any free negro or mulatto intermarry with any white woman, or if any white man shall intermarry with any negro or mulatto woman, such negro or mulatto shall become a slave during life, excepting mulattoes born of white women, who, for such intermarriage, shall only become servants for seven years, to be disposed of as the justices of the county court, where such marriage so happens, shall think fit; to be applied by them towards the support of a public school within the said county. And any white man or white woman who shall intermarry as aforesaid,

with any negro or mulatto, such white man or white woman shall become servants during the term of seven years, and shall be disposed of by the justices as aforesaid, and be applied to the uses aforesaid."

The other colonial law to which we refer was passed by Massachusetts in 1705, (chap. 6.) It is entitled "An act for the better preventing of a spurious and mixed issue," &c.; and it provides, that "if any negro or mulatto shall presume to smite or strike any person of the English or other Christian nation, such negro or mulatto shall be severely whipped, at the discretion of the justices before whom the offender shall be convicted."

And "that none of her Majesty's English or Scottish subjects, nor of any other Christian nation, within this province, shall contract matrimony with any negro or mulatto; nor shall any person, duly authorised to solemnize marriage, presume to join any such in marriage, on pain of forfeiting the sum of fifty pounds; one moiety thereof to her Majesty, for and towards the support of the Government within this province, and the other moiety to him or them that shall inform and sue for the same in any of her Majesty's courts of record within the province, by bill, plaint, or information."

We give both of these laws in the words used by the respective legislative bodies, because the language in which they are framed, as well as the provisions contained in them, show, too plainly to be misunderstood, the degraded condition of this unhappy race. They were still in force when the Revolution began, and are a faithful index to the state of feeling towards the class of persons of whom they speak, and of the position they occupied throughout the thirteen colonies, in the eyes and thoughts of the men who framed the Declaration of Independence and established the State Constitutions and Governments. They show that a perpetual and impassable barrier was intended to be erected between the white race and the one which they had reduced to slavery, and governed as subjects with absolute and despotic power, and which they then looked upon as so far below them in the scale of created beings, that intermarriages between white persons and negroes or mulattoes were regarded as unnatural and immoral, and punished as crimes, not only in the parties, but in the person who joined them in marriage. And no distinction in this respect was made between the free negro or mulatto and the slave, but this stigma, of the deepest degradation, was fixed upon the whole race.

We refer to these historical facts for the purpose of showing the fixed opinions concerning that race, upon which the statesmen of that day spoke and acted. It is necessary to do this, in order to determine whether the general terms used in the Constitution of the United States, as to the rights of man and the rights of the people, was intended to include them, or to give to them or their posterity the benefit of any of its provisions.

The language of the Declaration of Independence is equally conclusive:

It begins by declaring "that when in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation."

It then proceeds to say: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them is life, liberty, and the pursuit of happiness; that to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed."

The general words above quoted would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted; and instead of the sympathy of mankind, to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation.

Yet the men who framed this declaration were great men—high in literary acquirements—high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the

meaning of the language they used, and how it would be understood by others; and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery. They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, and no one misunderstood them. The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection.

This state of public opinion had undergone no change when the Constitution was adopted, as is equally evident from its provisions and language.

The brief preamble sets forth by whom it was formed, for what purposes, and for whose benefit and protection. It declares that it is formed by the *people* of the United States; that is to say, by those who were members of the different political communities in the several States; and its great object is declared to be to secure the blessings of liberty to themselves and their posterity. It speaks in general terms of the *people* of the United States, and of *citizens* of the several States, when it is providing for the exercise of the powers granted or the privileges secured to the citizen. It does not define what description of persons are intended to be included under these terms, or who shall be regarded as a citizen and one of the people. It uses them as terms so well understood, that no further description or definition was necessary.

But there are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed.

One of these clauses reserves to each of the thirteen States the right to import slaves until the year 1808, if it thinks proper. And the importation which it thus sanctions was unquestionably of persons of the race of which we are speaking, as the traffic in slaves in the United States had always been confined to them. And by the other provision the States pledge themselves to each other to maintain the right of property of the master, by delivering up to him any slave who may have escaped from his service, and be found within their respective territories. By the first above-mentioned clause, therefore, the right to purchase and hold this property is directly sanctioned and authorized for twenty years by the people who framed the Constitution. And by the second, they pledge themselves to maintain and uphold the right of the master in the manner specified, as long as the Government they then formed should endure. And these two provisions show, conclusively, that neither the description of persons therein referred to, nor their descendants, were embraced in any of the other provisions of the Constitution; for certainly these two clauses were not intended to confer on them or their posterity the blessings of liberty, or any of the personal rights so carefully provided for the citizen.

No one of that race had ever migrated to the United States voluntarily; all of them had been brought here as articles of merchandise. The number that had been emancipated at that time were but few in comparison with those held in slavery; and they were identified in the public mind with the race to which they belonged, and regarded as a part of the slave population rather than the free. It is obvious that they were not even in the minds of the framers of the Constitution when they were conferring special rights and privileges upon the citizens of a state in every other part of the Union.

Indeed, when we look to the condition of this race in the several States at the time, it is impossible to believe that these rights and privileges were intended to be extended to them.

It is very true, that in that portion of the Union where the labor of the negro race was found to be unsuited to the climate and unprofitable to the master, but few slaves were held at the time of the Declaration of Independence; and when the Constitution was adopted, it had entirely worn out in one of them, and measures had been taken for its gradual abolition in several others. But this change had not been produced by any change of opinion in relation to this race; but because it was discovered, from experience, that slave labor was unsuited to the climate and productions of these States: for some of the States, where it had ceased or nearly ceased to exist, were actively engaged in the slave trade, procuring cargoes on the coast of Africa, and transporting them for sale to those parts of the Union where their labor was found to be profitable, and suited to the climate and productions. And this traffic was openly carried on, and fortunes accumulated by it, without re-

proach from the people of the States where they resided. And it can hardly be supposed that, in the States where it was then countenanced in its worst form—that is, in the seizure and transportation—the people could have regarded those who were emancipated as entitled to equal rights with themselves.

And we may here again refer, in support of this proposition, to the plain and unequivocal language of the laws of the several States, some passed after the Declaration of Independence and before the Constitution was adopted, and some since the Government went into operation.

We need not refer, on this point, particularly to the laws of the present slaveholding States. Their statute books are full of provisions in relation to this class, in the same spirit with the Maryland law which we have before quoted. They have continued to treat them as an inferior class, and to subject them to strict police regulations, drawing a broad line of distinction between the citizen and the slave races, and legislating in relation to them upon the same principle which prevailed at the time of the Declaration of Independence. As relates to these States, it is too plain for argument, that they have never been regarded as a part of the people or citizens of the State, nor supposed to possess any political rights which the dominant race might not withhold or grant at their pleasure. And as long ago as 1822, the Court of Appeals of Kentucky decided that free negroes and mulattoes were not citizens within the meaning of the Constitution of the United States; and the correctness of this decision is recognized, and the same doctrine affirmed, in 1 Meigs's Tenn. Reports, 331.

And if we turn to the legislation of the States where slavery had worn out, or measures taken for its speedy abolition, we shall find the same opinions and principles equally fixed and equally acted upon.

Thus, Massachusetts, in 1786, passed a law similar to the colonial one of which we have spoken. The law of 1786, like the law of 1705, forbids the marriage of any white person with any negro, Indian, or mulatto, and inflicts a penalty of fifty pounds upon any one who shall join them in marriage; and declares all such marriages absolutely null and void, and degrades thus the unhappy issue of the marriage by fixing upon it the stain of bastardy. And this mark of degradation was renewed and again impressed upon the race, in the careful and deliberate preparation of their revised code published in 1836. This code forbids any person from joining in marriage any white person with any Indian, negro, or mulatto, and subjects the party who shall offend in this respect, to imprisonment, not exceeding six months in the common jail, or to hard labor, and to a fine of not less than fifty nor more than two hundred dollars; and like the law of 1786, it declares the marriage to be absolutely null and void. It will be seen that the punishment is increased by the code upon the person who shall marry them, by adding imprisonment to a pecuniary penalty.

So, too, in Connecticut. We refer more particularly to the legislation of this State, because it was not only among the first to put an end to slavery within its own territory, but was the first to fix a mark of reprobation upon the African slave trade. The law last mentioned was passed in October, 1788, about nine months after the State had ratified and adopted the present Constitution of the United States; and by that law it prohibited its own citizens, under severe penalties, from engaging in the trade, and declared all policies of insurance on the vessel or cargo made in the State to be null and void. But up to the time of the adoption of the Constitution, there is nothing in the legislation of the State indicating any change of opinion as to the relative rights and position of the white and black races in this country, or indicating that it meant to place the latter, when free, upon a level with its citizens. And certainly nothing which would have led the slaveholding States to suppose that Connecticut designed to claim for them, under the new Constitution, the equal rights and privileges and rank of citizens in every other State.

The first step taken by Connecticut upon this subject was as early as 1774, when it passed an act forbidding the further importation of slaves into the State. But the section containing the prohibition is introduced by the following preamble:

"And whereas the increase of slaves in this State is injurious to the poor, and inconvenient."

This recital would appear to have been carefully introduced, in order to prevent any misunderstanding of the motive which induced the Legislature to pass the law, and places it distinctly upon the interest and convenience of the white population—excluding the inference that it might have been intended in any degree for the benefit of the other.

And in the act of 1784, by which the issue of slaves, born after the time therein mentioned, were to be free at a certain age, the section is again introduced by a preamble assigning a similar motive for the act. It is in these words:

"Whereas sound policy requires that the abolition of slavery should be effected as soon as may be consistent with the rights of individuals, and the public safety and welfare"—showing that the right of property in the master was to be protected, and that the measure was one of policy, and to prevent the injury and inconvenience, to the whites, of a slave population in the State.

And still further pursuing its legislation, we find that in the same statute passed in 1774, which prohibited the further importation of slaves into the State, there is also a provision by which any negro, Indian, or mulatto servant, who was found wandering out of the town or place to which he belonged, without a written pass such as is therein described, was made liable to be seized by any one, and taken before the next authority to be examined and delivered up to his master—who was required to pay the charge which had accrued thereby. And a subsequent section of the same law provides, that if any free negro shall travel without such pass, and shall be stopped, seized, or taken up, he shall pay all charges arising thereby. And this law was in full operation when the Constitution of the United States was adopted, and was not repealed till 1797. So that up to that time free negroes and mulattoes were associated with servants and slaves in the police regulations established by the laws of the State.

And again, in 1833, Connecticut passed another law, which made it penal to set up or establish any school in that State for the instruction of persons of the African race not inhabitants of the State, or to instruct or teach in any such school or institution, or board or harbor for that purpose, any such person, without the previous consent in writing of the civil authority of the town in which such school or institution might be.

And it appears by the case of Crandall *v.* the State, reported in 10 Conn. Rep., 340, that upon an information filed against Prudence Crandall for a violation of this law, one of the points raised in the defence was, that the law was a violation of the Constitution of the United States; and that the persons instructed, although of the African race, were citizens of other States, and therefore entitled to the rights and privileges of citizens in the State of Connecticut. But Chief Justice Dagget, before whom the case was tried, held, that persons of that description were not citizens of a State, within the meaning of the word citizen in the Constitution of the United States, and were not therefore entitled to the privileges and immunities of citizens in other States.

The case was carried up to the Supreme Court of Errors of the State, and the question fully argued there. But the case went off upon another point, and no opinion was expressed on this question.

We have made this particular examination into the legislative and judicial action of Connecticut, because, from the early hostility it displayed to the slave trade on the coast of Africa, we may expect to find the laws of that State as lenient and favorable to the subject race as those of any other State in the Union; and if we find that at the time the Constitution was adopted, they were not even there raised to the rank of citizens, but were still held and treated as property, and the laws relating to them passed with reference altogether to the interest and convenience of the white race, we shall hardly find them elevated to a higher rank anywhere else.

A brief notice of the laws of two other States, and we shall pass on to other considerations.

By the laws of New Hampshire, collected and finally passed in 1815, no one was permitted to be enrolled in the militia of the State but free white citizens; and the same provision is found in a subsequent collection of the laws, made in 1855. Nothing could more strongly mark the entire repudiation of the African race. The alien is excluded, because, being born in a foreign country, he cannot be a member of the community until he is naturalized. But why are the African race, born in the State, not permitted to share in one of the highest duties of the citizen? The answer is obvious; he is not, by the institutions and laws of the State, numbered among its people. He forms no part of the sovereignty of the State and is not therefore called on to uphold and defend it.

Again, in 1822, Rhode Island, in its revised code, passed a law forbidding persons who were authorized to join persons in marriage, from joining in marriage any white person with any negro, Indian, or mulatto, under the penalty of two hundred dollars, and declaring all such marriages absolutely null and void; and the same law

was again re-enacted in its revised code of 1844. So that, down to the last-mentioned period, the strongest mark of inferiority and degradation was fastened upon the African race in that State.

It would be impossible to enumerate and compress in the space usually allotted to an opinion of a court, the various laws, marking the condition of this race, which were passed from time to time after the Revolution, and before and since the adoption of the Constitution of the United States. In addition to those already referred to, it is sufficient to say, that Chancellor Kent, whose accuracy and research no one will question, states in the sixth edition of his Commentaries (published in 1848, 2 vols., 258, note *b*,) that in no part of the country except Maine, did the African race, in point of fact, participate equally with the whites in the exercise of civil and political rights.

The legislation of the States therefore shows, in a manner not to be mistaken, the inferior and subject condition of that race at the time the Constitution was adopted, and long afterwards, throughout the thirteen States by which that instrument was framed; and it is hardly consistent with the respect due to these States, to suppose that they regarded at that time, as fellow-citizens and members of the sovereignty, a class of beings whom they had thus stigmatized; whom, as we are bound, out of respect to the State sovereignties, to assume they had deemed it just and necessary thus to stigmatize, and upon whom they had impressed such deep and enduring marks of inferiority and degradation; or, that when they met in convention to form the Constitution, they looked upon them as a portion of their constituents, or designed to include them in the provisions so carefully inserted for the security and protection of the liberties and rights of their citizens. It cannot be supposed that they intended to secure to them rights, and privileges, and rank, in the new political body throughout the Union, which every one of them denied within the limits of its own dominion. More especially, it cannot be believed that the large slaveholding States regarded them as included in the word citizens, or would have consented to a Constitution which might compel them to receive them in that character from another State. For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State.

It is impossible, it would seem, to believe that the great men of the slaveholding States, who took so large a share in framing the Constitution of the United States, and exercised so much influence in procuring its adoption, could have been so forgetful or regardless of their own safety and the safety of those who trusted and confided in them.

Besides, this want of foresight and care would have been utterly inconsistent with the caution displayed in providing for the admission of new members into this political family. For, when they gave to the citizens of each State the privileges and immunities of citizens in the several States, they at the same time took from the several States the power of naturalization, and confined that power exclusively to the Federal Government. No State was willing to permit another State to determine who should or should not be admitted as one of its citizens, and entitled to demand equal rights and privileges with their own people, within their own territories. The right of naturalization was therefore, with one accord, surrendered by the States, and confided to the Federal Government. And this power granted to Congress to establish an uniform rule of *naturalization* is, by the well understood meaning of the word, confined to persons born in a foreign country, under a foreign Government. It is not a power to raise to the rank of a citizen any one born in the United States, who, from birth or parentage, by the laws of the country, belongs to an inferior and subordinate class. And when we find the States guarding them-

selves from the indiscreet or improper admission by other States of emigrants from other countries, by giving the power exclusively to Congress, we cannot fail to see that they could never have left with the States a much more important power—that is, the power of transforming into citizens a numerous class of persons, who in that character would be much more dangerous to the peace and safety of a large portion of the Union, than the few foreigners one of the States might improperly naturalize.

The Constitution upon its adoption obviously took from the States all power by any subsequent legislation to introduce as a citizen into the political family of the United States any one, no matter where he was born, or what might be his character or condition; and it gave to Congress the power to confer this character upon those only who were born outside of the dominions of the United States. And no law of a State, therefore, passed since the Constitution was adopted, can give any right of citizenship outside of its own territory.

A clause similar to the one in the Constitution, in relation to the rights and immunities of citizens of one State in the other States, was contained in the Articles of Confederation. But there is a difference of language, which is worthy of note. The provision in the Articles of Confederation was "that the *free inhabitants* of each of the States, paupers, vagabonds, and fugitives from justice, excepted, should be entitled to all the privileges and immunities of free citizens in the several States."

It will be observed, that under this Confederation, each State had the right to decide for itself, and in its own tribunals, whom it would acknowledge as a free inhabitant of another State. The term *free inhabitant*, in the generality of its terms, would certainly include one of the African race who had been manumitted. But no example, we think, can be found of his admission to all the privileges of citizenship in any State of the Union after these Articles were formed, and while they continued in force. And, notwithstanding the generality of the words "free inhabitants," it is very clear that, according to their accepted meaning in that day, they did not include the African race, whether free or not: for the fifth section of the ninth article provides that Congress should have the power "to agree upon the number of land forces to be raised, and to make requisitions from each State for its quota in proportion to the number of *white* inhabitants in such State, which requisition should be binding."

Words could hardly have been used which more strongly mark the line of distinction between the citizen and the subject; the free and the subjugated races. The latter were not even counted when the inhabitants of a State were to be embodied in proportion to its numbers for the general defence. And it cannot for a moment be supposed, that a class of persons thus separated and rejected from those who formed the sovereignty of the States, were yet intended to be included under the words "free inhabitants," in the preceding article, to whom privileges and immunities were so carefully secured in every State.

But although this clause of the Articles of Confederation is the same in principle with that inserted in the Constitution, yet the comprehensive word *inhabitant*, which might be construed to include an emancipated slave, is omitted; and the privilege is confined to *citizens* of the State. And this alteration in words would hardly have been made, unless a different meaning was intended to be conveyed, or a possible doubt removed. The just and fair inference is, that as this privilege was about to be placed under the protection of the General Government, and the words expounded by its tribunals, and all power in relation to it taken from the State and its courts, it was deemed prudent to describe with precision and caution the persons to whom this high privilege was given—and the word *citizen* was on that account substituted for the words *free inhabitant*. The word citizen excluded, and no doubt intended to exclude, foreigners who had not become citizens of some one of the States when the Constitution was adopted; and also every description of persons who were not fully recognised as citizens in the several States. This, upon any fair construction of the instruments to which we have referred, was evidently the object and purpose of this change of words.

To all this mass of proof we have still to add, that Congress has repeatedly legislated upon the same construction of the Constitution that we have given. Three laws, two of which were passed almost immediately after the Government went into operation, will be abundantly sufficient to show this. The two first are particularly worthy of notice, because many of the men who assisted in framing the Constitution, and took an active part in procuring its adoption, were then in the halls of legislation, and certainly understood what they meant when they used the words "people of the United States" and "citizen" in that well-considered instrument.

The first of these acts is the naturalization law, which was passed at the second session of the first Congress, March 26, 1790, and confines the right of becoming citizens "*to aliens being free white persons*"

Now, the Constitution does not limit the power of Congress in this respect to white persons. And they may, if they think proper, authorize the naturalization of any one of any color, who was born under allegiance to another Government. But the language of the law above quoted, shows that citizenship at that time was perfectly understood to be confined to the white race; and that they alone constituted the sovereignty in the government.

Congress might, as we before said, have authorized the naturalization of Indians, because they were aliens and foreigners. But, in their then untutored and savage state, no one would have thought of admitting them as citizens in a civilized community. And, moreover, the atrocities they had but recently committed, when they were the allies of Great Britain in the Revolutionary war, were yet fresh in the recollection of the people of the United States, and they were even then guarding themselves against the threatened renewal of Indian hostilities. No one supposed then that any Indian would ask for, or was capable of enjoying the privileges of an American citizen, and the word white was not used with any particular reference to them.

Neither was it used with any reference to the African race imported into or born in this country; because Congress had no power to naturalize them, and therefore there was no necessity for using particular words to exclude them.

It would seem to have been used merely because it followed out the line of division which the Constitution has drawn between the citizen race, who formed and held the Government, and the African race, which they held in subjection and slavery, and governed at their own pleasure.

Another of the early laws of which we have spoken, is the first militia law, which was passed in 1792, at the first session of the second Congress. The language of this law is equally plain and significant with the one just mentioned. It directs that every "free able-bodied white male citizen" shall be enrolled in the militia. The word *white* is evidently used to exclude the African race, and the word "citizen" to exclude unnaturalized foreigners; the latter forming no part of the sovereignty, owing it no allegiance, and therefore under no obligation to defend it. The African race, however, born in the country, did owe allegiance to the Government, whether they were slaves or free; but it is repudiated, and rejected from the duties and obligations of citizenship in marked language.

The third act to which we have alluded is even still more decisive; it was passed as late as 1813, (2 Stat., 809,) and it provides: "that from and after the termination of the war in which the United States are now engaged with Great Britain, it shall not be lawful to employ, on board of any public or private vessels of the United States, any person or persons except citizens of the United States, *or* persons of color, natives of the United States."

Here the line of distinction is drawn in express words. Persons of color, in the judgment of Congress, were not included in the word citizens, and they are described as another and different class of persons, and authorized to be employed, if born in the United States.

And even as late as 1820, (chap. 104, sec. 8,) in the charter to the city of Washington, the corporation is authorized "to restrain and prohibit the nightly and other disorderly meetings of slaves, free negroes, and mulattoes," thus associating them together in its legislation; and after prescribing the punishment that may be inflicted on the slaves, proceeds in the following words: "And to punish such free negroes and mulattoes by penalties not exceeding twenty dollars for any one offence; and in case of the inability of any such free negro or mulatto to pay any such penalty and cost thereon, to cause him or her to be confined to labor for any time not exceeding six calendar months." And in a subsequent part of the same section, the act authorizes the corporation "to prescribe the terms and conditions upon which free negroes and mulattoes may reside in the city."

This law, like the laws of the States, shows that this class of persons were governed by special legislation directed expressly to them, and always connected with provisions for the government of slaves, and not with those for the government of free white citizens. And after such an uniform course of legislation as we have stated, by the colonies, by the States, and by Congress, running through a period of more than a century, it would seem that to call persons thus marked and stigmatized, "citizens" of the United States, "fellow-citizens," a constituent part of the

sovereignty, would be an abuse of terms, and not calculated to exalt the character or an American citizen in the eyes of other nations.

The conduct of the Executive Department of the Government has been in perfect harmony upon this subject with this course of legislation. The question was brought officially before the late William Wirt, when he was the Attorney General of the United States, in 1821, and he decided that the words "citizens of the United States" were used in the acts of Congress in the same sense as in the Constitution; and that free persons of color were not citizens, within the meaning of the Constitution and laws; and this opinion has been confirmed by that of the late Attorney General, Caleb Cushing, in a recent case, and acted upon by the Secretary of State, who refused to grant passports to them as "citizens of the United States."

But it is said that a person may be a citizen, and entitled to that character, although he does not possess all the rights which may belong to other citizens; as, for example, the right to vote, or to hold particular offices; and that yet, when he goes into another State, he is entitled to be recognized there as a citizen, although the State may measure his rights by the rights which it allows to persons of a like character or class resident in the State, and refuse to him the full rights of citizenship.

This argument overlooks the language of the provision in the Constitution of which we are speaking.

Undoubtedly, a person may be a citizen, that is, a member of the community who form the sovereignty, although he exercises no share of the political power, and is incapacitated from holding particular office. Women and minors, who form a part of the political family, cannot vote; and when a property qualification is required to vote or hold a particular office, those who have not the necessary qualification cannot vote or hold the office, yet they are citizens.

So, too, a person may be entitled to vote by the law of the State, who is not a citizen even of the State itself. And in some of the States of the Union foreigners not naturalized are allowed to vote. And the State may give the right to free negroes and mulattoes, but that does not make them citizens of the State, and still less of the United States. And the provision in the Constitution giving privileges and immunities in other States, does not apply to them.

Neither does it apply to a person who, being the citizen of a State, migrates to another State. For then he becomes subject to the laws of the State in which he lives, and he is no longer a citizen of the State from which he removed. And the State in which he resides may then, unquestionably, determine his *status* or condition, and place him among the class of persons who are not recognized as citizens, but belong to an inferior and subject race; and may deny him the privileges and immunities enjoyed by its citizens.

But so far as mere rights of persons are concerned, the provision in question is confined to citizens of a State who are temporarily in another State without taking up their residence there. It gives them no political rights in the State, as to voting or holding office, or in any other respect. For a citizen of one State has no right to participate in the government of another. But if he ranks as a citizen in the State to which he belongs, within the meaning of the Constitution of the United States, then, whenever he goes into another State, the Constitution clothes him, as to the rights of person, with all the privileges and immunities which belong to citizens of the State. And if persons of the African race are citizens of a State, and of the United States, they would be entitled to all these privileges and immunities in every State, and the State could not restrict them; for they would hold these privileges and immunities under the paramount authority of the Federal Government, and its courts would be bound to maintain and enforce them, the Constitution and laws of the State to the contrary notwithstanding. And if the States could limit or restrict them, or place the party in an inferior grade, this clause of the Constitution would be unmeaning, and could have no operation; and would give no rights to the citizen when in another State. He would have none but what the State itself chose to allow him. This is evidently not the construction or meaning of the clause in question. It guaranties rights, to the citizen, and the State cannot withhold them. And these rights are of a character and would lead to consequences which make it absolutely certain that the African race were not included under the name of citizens of a State, and were not in the contemplation of the framers of the Constitution when these privileges and immunities were provided for the protection of the citizen in other States.

The case of Legrand v. Darnall (2 Peters, 664) has been referred to for the pur-

pose of showing that this court has decided that the descendant of a slave may sue as a citizen in a court of the United States; but the case itself shows that the question did not arise and could not have arisen in the case.

It appears from the report, that Darnall was born in Maryland, and was the son of a white man by one of his slaves, and his father executed certain instruments to manumit him, and devised to him some landed property in the State. This property Darnall afterwards sold to Legrand, the appellant, who gave his notes for the purchase-money. But becoming afterwards apprehensive that the appellee had not been emancipated according to the laws of Maryland, he refused to pay the notes until he could be better satisfied as to Darnall's right to convey. Darnall, in the mean time, had taken up his residence in Pennsylvania, and brought suit on the notes, and recovered judgment in the Circuit Court for the district of Maryland.

The whole proceeding, as appears by the report, was an amicable one; Legrand being perfectly willing to pay the money, if he could obtain a title, and Darnall not wishing him to pay unless he could make him a good one. In point of fact, the whole proceeding was under the direction of the counsel who argued the case for the appellee, who was the mutual friend of the parties, and confided in by both of them, and whose only object was to have the rights of both parties established by judicial decision in the most speedy and least expensive manner.

Legrand, therefore, raised no objection to the jurisdiction of the court in the suit at law, because he was himself anxious to obtain the judgment of the court upon his title. Consequently, there was nothing in the record before the court to show that Darnall was of African descent, and the usual judgment and award of execution was entered. And Legrand thereupon filed his bill on the equity side of the Circuit Court, stating that Darnall was born a slave, and had not been legally emancipated, and could not therefore take the land devised to him, nor make Legrand a good title; and praying an injunction to restrain Darnall from proceeding to execution on the judgment, which was granted. Darnall answered, averring in his answer that he was a free man, and capable of conveying a good title. Testimony was taken on this point, and at the hearing the Circuit Court was of opinion that Darnall was a free man and his title good, and dissolved the injunction and dismissed the bill; and that decree was affirmed here, upon the appeal of Legrand.

Now, it is difficult to imagine how any question about the citizenship of Darnall, or his right to sue in that character, can be supposed to have arisen or been decided in that case. The fact that he was of African descent was first brought before the court upon the bill in equity. The suit at law had then passed into judgment and award of execution, and the Circuit Court, as a court of law, had no longer any authority over it. It was a valid and legal judgment, which the court that rendered it had not the power to reverse or set aside. And unless it had jurisdiction as a court of equity to restrain him from using its process as a court of law, Darnall, if he thought proper, would have been at liberty to proceed on his judgment, and compel the payment of the money, although the allegations in the bill were true, and he was incapable of making a title. No other court could have enjoined him, for certainly no State equity court could interfere in that way with the judgment of a Circuit Court of the United States.

But the Circuit Court as a court of equity certainly had equity jurisdiction over its own judgment as a court of law, without regard to the character of the parties; and had not only the right, but it was its duty—no matter who were the parties in the judgment—to prevent them from proceeding to enforce it by execution, if the court was satisfied that the money was not justly and equitably due. The ability of Darnall to convey did not depend upon his citizenship, but upon his title to freedom. And if he was free, he could hold and convey property, by the laws of Maryland, although he was not a citizen. But if he was by law still a slave, he could not. It was therefore the duty of the court, sitting as a court of equity in the latter case, to prevent him from using its process, as a court of common law, to compel the payment of the purchase-money, when it was evident that the purchaser must lose the land. But if he was free, and could make a title, it was equally the duty of the court not to suffer Legrand to keep the land, and refuse the payment of the money, upon the ground that Darnall was incapable of suing or being sued as a citizen in a court of the United States. The character or citizenship of the parties had no connection with the question of jurisdiction, and the matter in dispute had no relation to the citizenship of Darnall. Nor is such a question alluded to in the opinion of the Court.

Besides, we are by no means prepared to say that there are not many cases, civil

as well as criminal, in which a Circuit Court of the United States may exercise jurisdiction, although one of the African race is a party; that broad question is not before the court. The question with which we are now dealing is, whether a person of the African race can be a citizen of the United States, and become thereby entitled to a special privilege, by virtue of his title to that character, and which, under the Constitution, no one but a citizen can claim. It is manifest that the case of Legrand and Darnall has no bearing on that question, and can have no application to the case now before the court.

This case, however, strikingly illustrates the consequences that would follow the construction of the Constitution which would give the power contended for to a State. It would in effect give it also to an individual. For if the father of young Darnall had manumitted him in his lifetime, and sent him to reside in a State which recognized him as a citizen, he might have visited and sojourned in Maryland when he pleased, and as long as he pleased, as a citizen of the United States; and the State officers and tribunals would be compelled, by the paramount authority of the Constitution, to receive him and treat him as one of its citizens, exempt from the laws and police of the State in relation to a person of that description, and allow him to enjoy all the rights and privileges of citizenship without respect to the laws of Maryland, although such laws were deemed by it absolutely essential to its own safety.

The only two provisions which point to them and include them, treat them as property, and make it the duty of the Government to protect it; no other power, in relation to this race, is to be found in the Constitution; and as it is a Government of special, delegated, powers, no authority beyond these two provisions can be constitutionally exercised. The Government of the United States had no right to interfere for any other purpose but that of protecting the rights of the owner, leaving it altogether with the several States to deal with this race, whether emancipated or not, as each State may think justice, humanity, and the interests and safety of society, require. The States evidently intended to reserve this power exclusively to themselves.

No one, we presume, supposes that any change in public opinion or feeling, in relation to this unfortunate race, in the civilized nations of Europe or in this country, should induce the court to give to the words of the Constitution a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted. Such an argument would be altogether inadmissible in any tribunal called on to interpret it. If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself, by which it may be amended; but while it remains unaltered, it must be construed now as it was understood at the time of its adoption. It is not only the same in words, but the same in meaning, and delegates the same powers to the Government, and reserves and secures the same rights and privileges to the citizen; and as long as it continues to exist in its present form, it speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers, and was voted on and adopted by the people of the United States. Any other rule of construction would abrogate the judicial character of this court, and make it the mere reflex of the popular opinion or passion of the day. This court was not created by the Constitution for such purposes. Higher and graver trusts have been confided to it, and it must not falter in the path of duty.

What the construction was at that time, we think can hardly admit of doubt. We have the language of the Declaration of Independence and of the Articles of Confederation, in addition to the plain words of the Constitution itself; we have the legislation of the different States, before, about the time, and since, the Constitution was adopted; we have the legislation of Congress, from the time of its adoption to a recent period; and we have the constant and uniform action of the Executive Department, all concurring together, and leading to the same result. And if anything in relation to the construction of the Constitution can be regarded as settled, it is that which we now give to the word "citizen" and the word "people."

And upon a full and careful consideration of the subject, the court is of opinion, that, upon the facts stated in the plea in abatement, Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts; and, consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment on the plea in abatement is erroneous.

We are aware that doubts are entertained by some of the members of the court, whether the plea in abatement is legally before the court upon this writ of error;

but if that plea is regarded as waived, or out of the case upon any other ground, yet the question as to the jurisdiction of the Circuit Court is presented on the face of the bill of exception itself, taken by the plaintiff at the trial; for he admits that he and his wife were born slaves, but endeavors to make out his title to freedom and citizenship by showing that they were taken by their owner to certain places, hereinafter mentioned, where slavery could not by law exist, and that they thereby became free, and upon their return to Missouri became citizens of that State.

Now, if the removal of which he speaks did not give them their freedom, then by his own admission he is still a slave; and whatever opinions may be entertained in favor of the citizenship of a free person of the African race, no one supposes that a slave is a citizen of the State or of the United States. If, therefore, the acts done by his owner did not make them free persons, he is still a slave, and certainly incapable of suing in the character of a citizen.

The principle of law is too well settled to be disputed, that a court can give no judgment for either party, where it has no jurisdiction; and if, upon the showing of Scott himself, it appeared that he was still a slave, the case ought to have been dismissed, and the judgment against him and in favor of the defendant for costs, is, like that on the plea in abatement, erroneous, and the suit ought to have been dismissed by the Circuit Court for want of jurisdiction in that court.

But, before we proceed to examine this part of the case, it may be proper to notice an objection taken to the judicial authority of this court to decide it; and it has been said, that as this court has decided against the jurisdiction of the Circuit Court on the plea in abatement, it has no right to examine any question presented by the exception; and that anything it may say upon that part of the case will be extra-judicial, and mere obiter dicta.

This is a manifest mistake; there can be no doubt as to the jurisdiction of this court to revise the judgment of a Circuit Court, and to reverse it for any error apparent on the record, whether it be the error of giving judgment in a case over which it had no jurisdiction, or any other material error; and this, too, whether there is a plea in abatement or not.

The objection appears to have arisen from confounding writs of error to a State court, with writs of error to a Circuit Court of the United States. Undoubtedly, upon a writ of error to a State court, unless the record shows a case that gives jurisdiction, the case must be dismissed for want of jurisdiction in *this court*. And if it is dismissed on that ground, we have no right to examine and decide upon any question presented by the bill of exceptions, or any other part of the record. But writs of error to a State court, and to a Circuit Court of the United States, are regulated by different laws, and stand upon entirely different principles. And in a writ of error to a Circuit Court of the United States, the whole record is before this court for examination and decision; and if the sum in controversy is large enough to give jurisdiction, it is not only the right, but it is the judicial duty of the court, to examine the whole case as presented by the record; and if it appears upon its face that any material error or errors have been committed by the court below, it is the duty of this court to reverse the judgment, and remand the case. And certainly an error in passing a judgment upon the merits in favor of either party, in a case which it was not authorized to try, and over which it had no jurisdiction, is as grave an error as a court can commit.

The plea in abatement is not a plea to the jurisdiction of this court, but to the jurisdiction of the Circuit Court. And it appears by the record before us, that the Circuit Court committed an error, in deciding that it had jurisdiction, upon the facts in the case, admitted by the pleadings. It is the duty of the appellate tribunal to correct this error; but that could not be done by dismissing the case for want of jurisdiction here—for that would leave the erroneous judgment in full force, and the injured party without remedy. And the appellate court therefore exercises the power for which alone appellate courts are constituted, by reversing the judgment of the court below for this error. It exercises its proper and appropriate jurisdiction over the judgment and proceedings of the Circuit Court, as they appear upon the record brought up by the writ of error.

The correction of one error in the court below does not deprive the appellate court of the power of examining further into the record, and correcting any other material errors which may have been committed by the inferior court. There is certainly no rule of law—nor any practice—nor any decision of a court—which even questions this power in the appellate tribunal. On the contrary, it is the daily practice of this court, and of all appellate courts where they reverse the judgment of

an inferior court for error, to correct by its opinions whatever errors may appear on the record material to the case; and they have always held it to be their duty to do so where the silence of the court might lead to misconstruction or future controversy, and the point has been relied on by either side, and argued before the court.

In the case before us, we have already decided that the Circuit Court erred in deciding that it had jurisdiction upon the facts admitted by the pleadings. And it appears that, in the further progress of the case, it acted upon the erroneous principle it had decided on the pleadings, and gave judgment for the defendant, where, upon the facts admitted in the exception, it had no jurisdiction.

We are at a loss to understand upon what principle of law, applicable to appellate jurisdiction, it can be supposed that this court has not judicial authority to correct the last-mentioned error, because they had before corrected the former; or by what process of reasoning it can be made out, that the error of an inferior court in actually pronouncing judgment for one of the parties, in a case in which it had no jurisdiction, cannot be looked into or corrected by this court, because we have decided a similar question presented in the pleadings. The last point is distinctly presented by the facts contained in the plaintiff's own bill of exceptions, which he himself brings here by this writ of error. It was the point which chiefly occupied the attention of the counsel on both sides in the argument—and the judgment which this court must render upon both errors is precisely the same. It must, in each of them, exercise jurisdiction over the judgment, and reverse it for the errors committed by the court below; and issue a mandate to the Circuit Court to conform its judgment to the opinion pronounced by this court, by dismissing the case for want of jurisdiction in the Circuit Court. This is the constant and invariable practice of this court, where it reverses a judgment for want of jurisdiction in the Circuit Court.

It can scarcely be necessary to pursue such a question further. The want of jurisdiction in the court below may appear on the record without any plea in abatement. This is familiarly the case where a court of chancery has exercised jurisdiction in a case where the plaintiff had a plain and adequate remedy at law, and it so appears by the transcript when brought here by appeal. So also where it appears that a court of admiralty has exercised jurisdiction in a case belonging exclusively to a court of common law. In these cases there is no plea in abatement. And for the same reason, and upon the same principles, where the defect of jurisdiction is patent on the record, this court is bound to reverse the judgment, although the defendant has not pleaded in abatement to the jurisdiction of the inferior court.

The cases of Jackson *v.* Ashton and of Capron *v.* Van Noorden, to which we have referred in a previous part of this opinion, are directly in point. In the last-mentioned case, Capron brought an action against Van Noorden in a Circuit Court of the United States, without showing, by the usual averments of citizenship, that the court had jurisdiction. There was no plea in abatement put in, and the parties went to trial upon the merits. The court gave judgment in favor of the defendant with costs. The plaintiff thereupon brought his writ of error, and this court reversed the judgment given in favor of the defendant, and remanded the case with directions to dismiss it, because it did not appear by the transcript that the Circuit Court had jurisdiction.

The case before us still more strongly imposes upon this court the duty of examining whether the court below has not committed an error, in taking jurisdiction and giving a judgment for costs in favor of the defendant; for in Capron *v.* Van Noorden the judgment was reversed, because it did *not appear* that the parties were citizens of different States. They might or might not be. But in this case it *does appear* that the plaintiff was born a slave; and if the facts upon which he relies have not made him free, then it appears affirmatively on the record that he is not a citizen, and consequently his suit against Sandford was not a suit between citizens of different States, and the court had no authority to pass any judgment between the parties. The suit ought, in this view of it, to have been dismissed by the Circuit Court, and its judgment in favor of Sandford is erroneous, and must be reversed.

It is true that the result either way, by dismissal or by a judgment for the defendant, makes very little, if any, difference in a pecuniary or personal point of view to either party. But the fact that the result would be very nearly the same to the parties in either form of judgment, would not justify this court in sanctioning an error in the judgment which is patent on the record, and which, if sanctioned, might be drawn into precedent, and lead to serious mischief and injustice in some future suit.

We proceed, therefore, to inquire whether the facts relied on by the plaintiff entitled him to his freedom.

The case, as he himself states it, on the record brought here by his writ of error, is this:

The plaintiff was a negro slave, belonging to Dr. Emerson, who was a surgeon in the army of the United States. In the year 1834, he took the plaintiff from the State of Missouri to the military post at Rock Island, in the State of Illinois, and held him there as a slave until the month of April or May, 1836. At the time last mentioned, said Dr. Emerson removed the plaintiff from said military post at Rock Island to the military post at Fort Snelling, situate on the west bank of the Mississippi river, in the territory known as Upper Louisiana, acquired by the United States of France, and situate north of the latitude of thirty-six degrees thirty minutes north, and north of the State of Missouri. Said Dr. Emerson held the plaintiff in slavery at said Fort Snelling, from said last-mentioned date until the year 1838.

In the year 1835, Harriet, who is named in the second count of the plaintiff's declaration, was the negro slave of Major Taliaferro, who belonged to the army of the United States. In that year, 1835, said Major Taliaferro took said Harriet to said Fort Snelling, a military post, situated as hereinbefore stated, and kept her there as a slave until the year 1836, and then sold and delivered her as a slave, at said Fort Snelling, unto the said Dr. Emerson hereinbefore named. Said Dr. Emerson held said Harriet in slavery at said Fort Snelling until the year 1838.

In the year 1836, the plaintiff and Harriet intermarried, at Fort Snelling, with the consent of Dr. Emerson, who then claimed to be their master and owner. Eliza and Lizzie, named in the third count of the plaintiff's declaration, are the fruit of that marriage. Eliza is about fourteen years old, and was born on board the steamboat Gipsey, north of the north line of the State of Missouri, and upon the river Mississippi. Lizzie is about seven years old, and was born in the State of Missouri, at the military post called Jefferson Barracks.

In the year 1838, said Dr. Emerson removed the plaintiff and said Harriet, and their said daughter Eliza, from said Fort Snelling to the State of Missouri, where they have ever since resided.

Before the commencement of this suit, said Dr. Emerson sold and conveyed the plaintiff, and Harriet, Eliza, and Lizzie, to the defendant, as slaves, and the defendant has ever since claimed to hold them, and each of them, as slaves.

In considering this part of the controversy, two questions arise: 1. Was he, together with his family, free in Missouri by reason of the stay in the territory of the United States hereinbefore mentioned? And, 2. If they were not, is Scott himself free by reason of his removal to Rock Island, in the State of Illinois, as stated in the above admissions?

We proceed to examine the first question.

The act of Congress, upon which the plaintiff relies, declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty which meets us at the threshold of this part of the inquiry is, whether Congress was authorised to pass this law under any of the powers granted to it by the Constitution; for if the authority is not given by that instrument, it is the duty of this court to declare it void and inoperative, and incapable of conferring freedom upon any one who is held as a slave under the laws of any one of the States.

The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;" but, in the judgment of the court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States, and was within their boundaries as settled by the treaty with Great Britain, and can have no influence upon a territory afterwards acquired from a foreign Government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more.

A brief summary of the history of the times, as well as the careful and measured terms in which the article is framed, will show the correctness of this proposition.

It will be remembered that, from the commencement of the Revoluntionary war, serious difficulties existed between the States, in relation to the disposition of large

and unsettled territories which were included in the chartered limits of some of the States. And some of the other States, and more especially Maryland, which had no unsettled lands, insisted that as the unoccupied lands, if wrested from Great Britain, would owe their preservation to the common purse and the common sword, the money arising from them ought to be applied in just proportion among the several States to pay the expenses of the war, and ought not to be appropriated to the use of the State in whose chartered limits they might happen to lie, to the exclusion of the other States, by whose combined efforts and common expense the territory was defended and preserved against the claim of the British Government.

These difficulties caused much uneasiness during the war, while the issue was in some degree doubtful, and the future boundaries of the United States yet to be defined by treaty, if we achieved our independence.

The majority of the Congress of the Confederation obviously concurred in opinion with the State of Maryland, and desired to obtain from the States which claimed it a cession of this territory, in order that Congress might raise money on this security to carry on the war. This appears by the resolution passed on the 6th of September, 1780, strongly urging the States to cede these lands to the United States, both for the sake of peace and union among themselves, and to maintain the public credit; and this was followed by the resolution of October 10th, 1780, by which Congress pledged itself, that if the lands were ceded, as recommended by the resolution above mentioned, they should be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States, which should become members of the Federal Union, and have the same rights of sovereignty, and freedom, and independence, as other States.

But these difficulties became much more serious after peace took place, and the boundaries of the United States were established. Every State, at that time, felt severely the pressure of its war debt; but in Virginia, and some other States, there were large territories of unsettled lands, the sale of which would enable them to discharge their obligations without much inconvenience; while other States, which had no such resource, saw before them many years of heavy and burdensome taxation; and the latter insisted, for the reasons before stated, that these unsettled lands should be treated as the common property of the States, and the proceeds applied to their common benefit.

The letters from the statesmen of that day will show how much this controversy occupied their thoughts, and the dangers that were apprehended from it. It was the disturbing element of the time, and fears were entertained that it might dissolve the Confederation by which the States were then united.

These fears and dangers were, however, at once removed, when the State of Virginia, in 1784, voluntarily ceded to the United States the immense tract of country lying northwest of the river Ohio, and which was within the acknowledged limits of the State. The only object of the State, in making this cession, was to put an end to the threatening and exciting controversy, and to enable the Congress of that time to dispose of the lands, and appropriate the proceeds as a common fund for the common benefit of the States. It was not ceded because it was inconvenient to the State to hold and govern it, nor from any expectation that it could be better or more conveniently governed by the United States.

The example of Virginia was soon afterwards followed by other States, and, at the time of the adoption of the Constitution, all of the States, similarly situated, had ceded their unappropriated lands, except North Carolina and Georgia. The main object for which these cessions were desired and made, was on account of their money value, and to put an end to a dangerous controversy, as to who was justly entitled to the proceeds when the land should be sold. It is necessary to bring this part of the history of these cessions thus distinctly into view, because it will enable us the better to comprehend the phraseology of the article in the Constitution, so often referred to in the argument.

Undoubtedly the powers of sovereignty and the eminent domain were ceded with the land. This was essential, in order to make it effectual, and to accomplish its objects. But it must be remembered that, at that time, there was no Government of the United States in existence with enumerated and limited powers; what was then called the United States, were thirteen separate, sovereign, independent States, which had entered into a league or confederation for their mutual protection and advantage, and the Congress of the United States was composed of the representatives of these separate sovereignties, meeting together, as equals, to discuss and

decide on certain measures which the States, by the Articles of Confederation, had agreed to submit to their decision. But this Confederation had none of the attributes of sovereignty in legislative, executive, or judicial power. It was little more than a congress of ambassadors, authorised to represent separate nations, in matters in which they had a common concern.

It was this congress that accepted the cession from Virginia. They had no power to accept it under the Articles of Confederation. But they had an undoubted right, as independent sovereignties, to accept any cession of territory for their common benefit, which all of them assented to; and it is equally clear, that as their common property, and having no superior to control them, they had the right to exercise absolute dominion over it, subject only to the restrictions which Virginia had imposed in her act of cession. There was, as we have said, no Government of the United States then in existence with special enumerated and limited powers. The territory belonged to sovereignties, who, subject to the limitations above mentioned, had a right to establish any form of Government they pleased, by compact or treaty among themselves, and to regulate rights of person and rights of property in the territory, as they might deem proper. It was by a Congress, representing the authority of these several and separate sovereignties, and acting under their authority and command (but not from any authority derived from the Articles of Confederation,) that the instrument usually called the ordinance of 1787 was adopted; regulating in much detail the principles and the laws by which this territory should be governed; and among other provisions, slavery is prohibited in it. We do not question the power of the States, by agreement among themselves, to pass this ordinance, nor its obligatory force in the territory, while the confederation or league of the States in their separate sovereign character continued to exist.

This was the state of things when the Constitution of the United States was formed. The territory ceded by Virginia belonged to the several confederated States as common property, and they had united in establishing in it a system of government and jurisprudence, in order to prepare it for admission as States, according to the terms of the cession. They were about to dissolve this federative Union, and to surrender a portion of their independent sovereignty to a new Government, which, for certain purposes, would make the people of the several States one people, and which was to be supreme and controlling within its sphere of action throughout the United States; but this Government was to be carefully limited in its powers, and to exercise no authority beyond those expressly granted by the Constitution, or necessarily to be implied from the language of the instrument, and the objects it was intended to accomplish; and as this league of States would, upon the adoption of the new Government, cease to have any power over the territory, and the ordinance they had agreed upon be incapable of execution and a mere nullity, it was obvious that some provision was necessary to give the new Government sufficient power to enable it to carry into effect the objects for which it was ceded, and the compacts and agreements which the States had made with each other in the exercise of their powers of sovereignty. It was necessary that the lands should be sold to pay the war debt; that a Government and system of jurisprudence should be maintained in it, to protect the citizens of the United States who should migrate to the territory, in their rights of person and of property. It was also necessary that the new Government, about to be adopted, should be authorized to maintain the claim of the United States to the unappropriated lands in North Carolina and Georgia, which had not then been ceded, but the cession of which was confidently anticipated upon some terms that would be arranged between the General Government and these two States. And, moreover, there were many articles of value besides this property in land, such as arms, military stores, munitions, and ships of war, which were the common property of the States, when acting in their independent characters as confederates, which neither the new Government nor any one else would have a right to take possession of, or control, without authority from them; and it was to place these things under the guardianship and protection of the new Government, and to clothe it with the necessary powers, that the clause was inserted in the Constitution which gives Congress the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." It was intended for a specific purpose, to provide for the things we have mentioned. It was to transfer to the new Government the property then held in common by the States, and to give to that Government power to apply it to the objects for which it had been destined by mutual agreement among the States before their league was dissolved. It applied only to the property which the States

held in common at that time, and has no reference whatever to any territory or other property which the new sovereignty might afterwards itself acquire.

The language used in the clause, the arrangement and combination of the powers, and the somewhat unusual phraseology it uses, when it speaks of the political power to be exercised in the government of the territory, all indicate the design and meaning of the clause to be such as we have mentioned. It does not speak of *any* territory, nor of *Territories*, but uses language which, according to its legitimate meaning, points to a particular thing. The power is given in relation only to *the* territory of the United States—that is, to a territory then in existence, and then known or claimed as the territory of the United States. It begins its enumeration of powers by that of disposing, in other words, making sale of the lands, or raising money from them, which, as we have already said, was the main object of the cession, and which is accordingly the first thing provided for in the article. It then gives the power which was necessarily associated with the disposition and sale of the lands—that is, the power of making needful rules and regulations respecting the territory. And whatever construction may now be given to these words, every one, we think, must admit that they are not the words usually employed by statesmen in giving supreme power of legislation. They are certainly very unlike the words used in the power granted to legislate over territory which the new Government might afterwards itself obtain by cession from a State, either for its seat of Government, or for forts, magazines, arsenals, dock yards, and other needful buildings.

And the same power of making needful rules respecting the territory is, in precisely the same language, applied to the *other* property belonging to the United States—associating the power over the territory in this respect with the power over movable or personal property—that is, the ships, arms, and munitions of war, which then belonged in common to the State sovereignties. And it will hardly be said, that this power, in relation to the last-mentioned objects, was deemed necessary to be thus specially given to the new Government, in order to authorize it to make needful rules and regulations respecting the ships it might itself build, or arms and munitions of war it might itself manufacture or provide for the public service.

No one, it is believed, would think a moment of deriving the power of Congress to make needful rules and regulations in relation to property of this kind from this clause of the Constitution. Nor can it, upon any fair construction, be applied to any property, but that which the new Government was about to receive from the confederated States. And if this be true as to this property, it must be equally true and limited as to the territory, which is so carefully and precisely coupled with it—and like it referred to as property in the power granted. The concluding words of the clause appear to render this construction irresistible; for, after the provisions we have mentioned, it proceeds to say, "that nothing in the Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

Now, as we have before said, all of the States, except North Carolina and Georgia, had made the cession before the Constitution was adopted, according to the resolution of Congress of October 10, 1780. The claims of other States, that the unappropriated lands in these two States should be applied to the common benefit, in like manner, was still insisted on, but refused by the States. And this member of the clause in question evidently applies to them, and can apply to nothing else. It was to exclude the conclusion that either party, by adopting the Constitution, would surrender what they deemed their rights. And when the latter provision relates so obviously to the unappropriated lands not yet ceded by the States, and the first clause makes provision for those then actually ceded, it is impossible, by any just rule of construction, to make the first provision general, and extend to all territories, which the Federal Government might in any way afterwards acquire, when the latter is plainly and unequivocally confined to a particular territory; which was a part of the same controversy, and involved in the same dispute, and depended upon the same principles. The union of the two provisions in the same clause shows that they were kindred subjects; and that the whole clause is local, and relates only to lands, within the limits of the United States, which had been or then were claimed by a State; and that no other territory was in the mind of the framers of the Constitution, or intended to be embraced in it. Upon any other construction it would be impossible to account for the insertion of the last provision in the place where it is found, or to comprehend why, or for what object, it was associated with the previous provision.

This view of the subject is confirmed by the manner in which the present Govern

ment of the United States dealt with the subject as soon as it came into existence. It must be borne in mind that the same States that formed the Confederation also formed and adopted the new Government, to which so large a portion of their former sovereign powers were surrendered. It must also be borne in mind that all of these same States which had then ratified the new Constitution were represented in the Congress which passed the first law for the government of this territory; and many of the members of that legislative body had been deputies from the States under the Confederation—had united in adopting the ordinance of 1787, and assisted in forming the new Government under which they were then acting, and whose powers they were then exercising. And it is obvious from the law they passed to carry into effect the principles and provisions of the ordinance, that they regarded it as the act of the States done in the exercise of their legitimate powers at the time. The new Government took the territory as it found it, and in the condition in which it was transferred, and did not attempt to undo anything that had been done. And, among the earliest laws passed under the new Government, is one reviving the ordinance of 1787, which had become inoperative and a nullity upon the adoption of the Constitution. This law introduces no new form or principles for its government, but recites, in the preamble, that it is passed in order that this ordinance may continue to have full effect, and proceeds to make only those rules and regulations which were needful to adapt it to the new Government, into whose hands the power had fallen. It appears, therefore, that this Congress regarded the purposes to which the land in this Territory was to be applied, and the form of government and principles of jurisprudence which were to prevail there, while it remained in the Territorial State, as already determined on by the States when they had full power and right to make the decision; and that the new Government, having received it in this condition, ought to carry substantially into effect the plans and principles which had been previously adopted by the States, and which, no doubt, the States anticipated when they surrendered their power to the new Government. And if we regard this clause of the Constitution as pointing to this Territory, with a Territorial Government already established in it, which had been ceded to the States for the purposes hereinbefore mentioned—every word in it is perfectly appropriate and easily understood, and the provisions it contains are in perfect harmony with the objects for which it was ceded, and with the condition of its government as a Territory at the time. We can, then, easily account for the manner in which the first Congress legislated on the subject—and can also understand why this power over the territory was associated in the same clause with the other property of the United States, and subjected to the like power of making needful rules and regulations. But if the clause is construed in the expanded sense contended for, so as to embrace any territory acquired from a foreign nation by the present Government, and to give it in such territory a despotic and unlimited power over persons and property, such as the confederated States might exercise in their common property, it would be difficult to account for the phraseology used, when compared with other grants of power—and also for its association with the other provisions in the same clause.

The Constitution has always been remarkable for the felicity of its arrangement of different subjects, and the perspicuity and appropriateness of the language it uses. But if this clause is construed to extend to territory acquired by the present Government from a foreign nation, outside of the limits of any charter from the British Government to a colony, it would be difficult to say, why it was deemed necessary to give the Government the power to sell any vacant lands belonging to the sovereignty which might be found within it; and if this was necessary, why the grant of this power should precede the power to legislate over it and establish a Government there; and still more difficult to say, why it was deemed necessary so specially and particularly to grant the power to make needful rules and regulations in relation to any personal or movable property it might acquire there. For the words, *other property*, necessarily, by every known rule of interpretation, must mean property of a different description from territory or land. And the difficulty would perhaps be insurmountable in endeavoring to account for the last member of the sentence, which provides that "nothing in this Constitution shall be so construed as to prejudice any claims of the United States or any particular State," or to say how any particular State could have claims in or to a territory ceded by a foreign Government, or to account for associating this provision with the preceding provisions of the clause, with which it would appear to have no connection.

The words "needful rules and regulations" would seem, also, to have been cautiously used for some definite object. They are not the words usually employed by

statesmen, when they mean to give the powers of sovereignty, or to establish a Government, or to authorise its establishment. Thus, in the law to renew and keep alive the ordinance of 1787, and to re-establish the Government, the title of the law is: "An act to provide for the government of the territory northwest of the river Ohio." And in the Constitution, when granting the power to legislate over the territory that may be selected for the seat of Government independently of a State, it does not say Congress shall have power "to make all needful rules and regulations respecting the territory;" but it declares that "Congress shall have power to exercise exclusive legislation in all cases whatsoever over such District (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States.

The words "rules and regulations" are usually employed in the Constitution in speaking of some particular specified power which it means to confer on the Government, and not, as we have seen, when granting general powers of legislation. As, for example, in the particular power to Congress "to make rules for the government and regulation of the land and naval forces, or the particular and specific power to regulate commerce;" "to establish an uniform *rule* of naturalization;" "to coin money and *regulate* the value thereof." And to construe the words of which we are speaking as a general and unlimited grant of sovereignty over territories which the Government might afterwards acquire, is to use them in a sense and for a purpose for which they were not used in any other part of the instrument. But if confined to a particular Territory, in which a Government and laws had already been established, but which would require some alterations to adapt it to the new Government, the words are peculiarly applicable and appropriate for that purpose.

The necessity of this special provision in relation to property and the rights or property held in common by the confederated States, is illustrated by the first clause of the sixth article. This clause provides that "all debts, contracts, and engagements entered into before the adoption of this Constitution, shall be as valid against the United States under this Government as under the Confederation." This provision, like the one under consideration, was indispensable if the new Constitution was adopted. The new Government was not a mere change in a dynasty, or in a form of government, leaving the nation or sovereignty the same, and clothed with all the rights, and bound by all the obligations of the preceding one. But, when the present United States came into existence under the new Government, it was a new political body, a new nation, then for the first time taking its place in the family of nations. It took nothing by succession from the Confederation. It had no right, as its successor, to any property or rights of property which it had acquired, and was not liable for any of its obligations. It was evidently viewed in this light by the framers of the Constitution. And as the several States would cease to exist in their former confederated character upon the adoption of the Constitution, and could not, in that character, again assemble together, special provisions were indispensable to transfer to the new Government the property and rights which at that time they held in common; and at the same time to authorize it to lay taxes and appropriate money to pay the common debt which they had contracted; and this power could only be given to it by special provisions in the Constitution. The clause in relation to the territory and other property of the United States provided for the first, and the clause last quoted provides for the other. They have no connection with the general powers and rights of sovereignty delegated to the new Government, and can neither enlarge nor diminish them. They were inserted to meet a present emergency, and not to regulate its powers as a Government.

Indeed, a similar provision was deemed necessary, in relation to treaties made by the Confederation; and when in the clause next succeeding the one of which we have last spoken, it is declared that treaties shall be the supreme law of the land, care is taken to include, by express words, the treaties made by the confederated States. The language is: "and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

Whether, therefore, we take the particular clause in question, by itself, or in connection with the other provisions of the Constitution, we think it clear, that it applies only to the particular territory of which we have spoken, and cannot, by any just rule of interpretation, be extended to territory which the new Government might afterwards obtain from a foreign nation. Consequently, the power which Congress may have lawfully exercised in this Territory, while it remained under a Territorial Government, and which may have been sanctioned by judicial decision, can furnish

no justification and no argument to support a similar exercise of power over territory afterwards acquired by the Federal Government. We put aside, therefore, any argument, drawn from precedents, showing the extent of the power which the General Government exercised over slavery in this Territory, as altogether inapplicable to the case before us.

But the case of the American and Ocean Insurance Companies *v.* Canter (1 Pet., 511) has been quoted as establishing a different construction of this clause of the Constitution. There is, however, not the slightest conflict between the opinion now given and the one referred to; and it is only by taking a single sentence out of the latter and separating it from the context, that even an appearance of conflict can be shown. We need not comment on such a mode of expounding an opinion of the court. Indeed it most commonly misrepresents instead of expounding it. And this is fully exemplified in the case referred to, where, if one sentence is taken by itself, the opinion would appear to be in direct conflict with that now given; but the words which immediately follow that sentence show that the court did not mean to decide the point, but merely affirmed the power of Congress to establish a Government in the Territory, leaving it an open question, whether that power was derived from this clause in the Constitution, or was to be necessarily inferred from a power to acquire territory by cession from a foreign Government. The opinion on this part of the case is short, and we give the whole of it to show how well the selection of a single sentence is calculated to mislead.

The passage referred to is in page 542, in which the court, in speaking of the power of Congress to establish a Territorial Government in Florida until it should become a State, uses the following language:

"In the mean time Florida continues to be a Territory of the United States, governed by that clause of the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property of the United States. Perhaps the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self government, may result, necessarily, from the facts that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. *Whichever may be the source from which the power is derived, the possession of it is unquestionable.*"

It is thus clear, from the whole opinion on this point, that the court did not mean to decide whether the power was derived from the clause in the Constitution, or was the necessary consequence of the right to acquire. They do decide that the power in Congress is unquestionable, and in this we entirely concur, and nothing will be found in this opinion to the contrary. The power stands firmly on the latter alternative put by the court—that is, as "*the inevitable consequence of the right to acquire territory.*"

And what still more clearly demonstrates that the court did not mean to decide the question, but leave it open for future consideration, is the fact that the case was decided in the Circuit Court by Mr. Justice Johnson, and his decision was affirmed by the Supreme Court. His opinion at the circuit is given in full in a note to the case, and in that opinion he states, in explicit terms, that the clause of the Constitution applies only to the territory then within the limits of the United States, and not to Florida, which had been acquired by cession from Spain. This part of his opinion will be found in the note in page 517 of the report. But he does not dissent from the opinion of the Supreme Court; thereby showing that, in his judgment, as well as that of the court, the case before them did not call for a decision on that particular point, and the court abstained from deciding it. And in a part of its opinion subsequent to the passage we have quoted, where the court speak of the legislative power of Congress in Florida, they still speak with the same reserve. And in page 546, speaking of the power of Congress to authorise the Territorial Legislature to establish courts there, the court say: "They are legislative courts, created in virtue of the general right of sovereignty which exists in the Government, or in virtue of that clause which enables Congress to make all needful rules and regulations respecting the territory belonging to the United States."

It has been said that the construction given to this clause is new, and now for the first time brought forward. The case of which we are speaking, and which has been so much discussed, shows that the fact is otherwise. It shows that precisely the same question came before Mr. Justice Johnson, at his circuit, thirty years ago—was fully considered by him, and the same construction given to the clause

in the Constitution which is now given by this court. And that upon an appeal from his decision the same question was brought before this court, but was not decided because a decision upon it was not required by the case before the court.

There is another sentence in the opinion which has been commented on, which even in a still more striking manner shows how one may mislead or be misled by taking out a single sentence from the opinion of a court, and leaving out of view what precedes and follows. It is in page 546, near the close of the opinion, in which the court say: "In legislating for them," (the territories of the United States,) "Congress exercises the combined powers of the General and of a State Government." And it is said, that as a State may unquestionably prohibit slavery within its territory, this sentence decides in effect that Congress may do the same in a territory of the United States, exercising there the powers of a State, as well as the power of the General Government.

The examination of this passage in the case referred to, would be more appropriate when we come to consider in another part of this opinion what power Congress can constitutionally exercise in a Territory, over the rights of person or rights of property of a citizen. But, as it is in the same case with the passage we have before commented on, we dispose of it now, as it will save the court from the necessity of referring again to the case. And it will be seen upon reading the page in which this sentence is found, that it has no reference whatever to the power of Congress over rights of person or rights of property—but relates altogether to the power of establishing judicial tribunals to administer the laws constitutionally passed, and defining the jurisdiction they may exercise.

The law of Congress establishing a Territorial Government in Florida, provided that the Legislature of the Territory should have legislative powers over "all rightful objects of legislation; but no law should be valid which was inconsistent with the laws and Constitution of the United States."

Under the power thus conferred, the Legislature of Florida passed an act, erecting a tribunal at Key West to decide cases of salvage. And in the case of which we are speaking, the question arose whether the Territorial Legislature could be authorised by Congress to establish such a tribunal, with such powers; and one of the parties, among other objections, insisted that Congress could not under the Constitution authorise the Legislature of the Territory to establish such a tribunal with such powers, but that it must be established by Congress itself; and that a sale of cargo made under its order, to pay salvors, was void, as made without legal authority, and passed no property to the purchaser.

It is in disposing of this objection that the sentence relied on occurs, and the court begin that part of the opinion by stating with great precision the point which they are about to decide.

They say: "It has been contended that by the Constitution of the United States, the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction; and that the whole of the judicial power must be vested 'in one Supreme Court, and in such inferior courts as Congress shall from time to time ordain and establish.' Hence it has been argued that Congress cannot vest admiralty jurisdiction in courts created by the Territorial Legislature."

And after thus clearly stating the point before them, and which they were about to decide, they proceed to show that these Territorial tribunals were not constitutional courts, but merely legislative, and that Congress might, therefore, delegate the power to the Territorial Government to establish the court in question; and they conclude that part of the opinion in the following words: "Although admiralty jurisdiction can be exercised in the States in those courts only which are established in pursuance of the third article of the Constitution, the same limitation does not extend to the Territories. In legislating for them, Congress exercises the combined powers of the General and State Governments."

Thus it will be seen by these quotations from the opinion, that the court, after stating the question it was about to decide in a manner too plain to be misunderstood, proceeded to decide it, and announced, as the opinion of the tribunal, that in organizing the judicial department of the Government in a Territory of the United States, Congress does not act under, and is not restricted by, the third article in the Constitution, and is not bound, in a Territory, to ordain and establish courts in which the judges hold their offices during good behaviour, but may exercise the discretionary power which a State exercises in establishing its judicial department, and regulating the jurisdiction of its courts, and may authorize the Territorial Government to establish, or may itself establish, courts in which the

judges hold their offices for a term of years only; and may vest in them judicial power upon subjects confided to the judiciary of the United States. And in doing this, Congress undoubtedly exercises the combined power of the General and a State Government. It exercises the discretionary power of a State Government in authorizing the establishment of a court in which the judges hold their appointments for a term of years only, and not during good behaviour; and it exercises the power of the General Government in investing that court with admiralty jurisdiction, over which the General Government had exclusive jurisdiction in the Territory.

No one, we presume, will question the correctness of that opinion; nor is there anything in conflict with it in the opinion now given. The point decided in the case cited has no relation to the question now before the court. That depended on the construction of the third article of the Constitution, in relation to the judiciary of the United States, and the power which Congress might exercise in a Territory in organizing the judicial department of the Government. The case before us depends upon other and different provisions of the Constitution, altogether separate and apart from the one above mentioned. The question as to what courts Congress may ordain or establish in a Territory to administer laws which the Constitution authorizes it to pass, and what laws it is or is not authorized by the Constitution to pass, are widely different—are regulated by different and separate articles of the Constitution, and stand upon different principles. And we are satisfied that no one who reads attentively the page in Peters's Reports to which we have referred, can suppose that the attention of the court was drawn for a moment to the question now before this court, or that it meant in that case to say that Congress had a right to prohibit a citizen of the United States from taking any property which he lawfully held into a Territory of the United States.

This brings us to examine by what provision of the Constitution the present Federal Government, under its delegated and restricted powers, is authorized to acquire territory outside of the original limits of the United States, and what powers it may exercise therein over the person or property of a citizen of the United States, while it remains a Territory, and until it shall be admitted as one of the States of the Union.

There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new States. That power is plainly given; and if a new State is admitted, it needs no further legislation from Congress, because the Constitution itself defines the relative rights and powers, and duties of the State, and the citizens of the State, and the Federal Government. But no power is given to acquire a Territory to be held and governed permanently in that character.

And indeed the power exercised by Congress to acquire territory and establish a Government there, according to its own unlimited discretion, was viewed with great jealousy by the leading statesmen of the day. And in the Federalist, (No. 38,) written by Mr. Madison, he speaks of the acquisition of the Northwestern Territory by the confederated States, by the cession from Virginia, and the establishment of a Government there, as an exercise of power not warranted by the Articles of Confederation, and dangerous to the liberties of the people. And he urges the adoption of the Constitution as a security and safeguard against such an exercise of power.

We do not mean, however, to question the power of Congress in this respect. The power to expand the territory of the United States by the admission of new States is plainly given; and in the construction of this power by all the departments of the Government, it has been held to authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a State, and not to be held as a colony and governed by Congress with absolute authority; and as the propriety of admitting a new State is committed to the sound discretion of Congress, the power to acquire territory for that purpose, to be held by the United States until it is in a suitable condition to become a State upon an equal footing with the other States, must rest upon the same discretion. It is a question for the political department of the Government, and not the judicial; and whatever the political department of the Government shall recognize as within the limits of the United States, the judicial department is also bound to recognize, and to administer in it the laws of the United States, so far as they apply, and to maintain in the Territory

the authority and rights of the Government, and also the personal rights and rights of property of individual citizens, as secured by the Constitution. All we mean to say on this point is, that, as there is no express regulation in the Constitution defining the power which the General Government may exercise over the person or property of a citizen in a Territory thus acquired, the court must necessarily look to the provisions and principles of the Constitution, and its distribution of powers, for the rules and principles by which its decision must be governed.

Taking this rule to guide us, it may be safely assumed that citizens of the United States who migrate to a Territory belonging to the people of the United States, cannot be ruled as mere colonists, dependent upon the will of the General Government, and to be governed by any laws it may think proper to impose. The principle upon which our Governments rest, and upon which alone they continue to exist, is the union of States, sovereign and independent within their own limits in their internal and domestic concerns, and bound together as one people by a General Government, possessing certain enumerated and restricted powers, delegated to it by the people of the several States, and exercising supreme authority within the scope of the powers granted to it, throughout the dominion of the United States. A power, therefore, in the General Government to obtain and hold colonies and dependent territories, over which they might legislate without restriction, would be inconsistent with its own existence in its present form. Whatever it acquires, it acquires for the benefit of the people of the several States who created it. It is their trustee acting for them, and charged with the duty of promoting the interests of the whole people of the whole Union in the exercise of the powers specifically granted.

At the time when the Territory in question was obtained by cession from France, it contained no population fit to be associated together and admitted as a State; and it therefore was absolutely necessary to hold possession of it, as a Territory belonging to the United States, until it was settled and inhabited by a civilized community capable of self-government, and in a condition to be admitted on equal terms with the other States as a member of the Union. But, as we have before said, it was acquired by the General Government, as the representative and trustee of the people of the United States, and it must therefore be held in that character for their common and equal benefit; for it was the people of the several States, acting through their agent and representative, the Federal Government, who in fact acquired the Territory in question, and the Government holds it for their common use until it shall be associated with the other States as a member of the Union.

But until that time arrives, it is undoubtedly necessary that some Government should be established in order to organize society, and to protect the inhabitants in their persons and property; and as the people of the United States could act in this matter only through the Government which represented them, and through which they spoke and acted when the Territory was obtained, it was not only within the scope of its powers, but it was its duty to pass such laws and establish such a Government as would enable those by whose authority they acted to reap the advantages anticipated from its acquisition, and to gather there a population which would enable it to assume the position to which it was destined among the States of the Union. The power to acquire necessarily carries with it the power to preserve and apply to the purposes for which it was acquired. The form of government to be established necessarily rested in the discretion of Congress. It was their duty to establish the one that would be best suited for the protection and security of the citizens of the United States, and other inhabitants who might be authorized to take up their abode there, and that must always depend upon the existing condition of the Territory, as to the number and character of its inhabitants, and their situation in the Territory. In some cases a Government, consisting of persons appointed by the Federal Government, would best subserve the interests of the Territory, when the inhabitants were few and scattered, and new to one another. In other instances, it would be more advisable to commit the powers of self-government to the people who had settled in the Territory, as being the most competent to determine what was best for their own interests. But some form of civil authority would be absolutely necessary to organize and preserve civilized society, and prepare it to become a State; and what is the best form must always depend on the condition of the territory at the time, and the choice of the mode must depend upon the exercise of a discretionary power by Congress, acting within the scope of its constitutional authority, and not infringing upon the rights of person or rights of property of the citizen who might go there to reside, or for any other lawful purpose. It was acquired by the

exercise of this discretion, and it must be held and governed in like manner, until it is fitted to be a State.

But the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of Government. The powers of the Government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. And when the Territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its powers over the citizen strictly defined, and limited by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a Government and sovereignty. It has no power of any kind beyond it; and it cannot, when it enters a Territory of the United States, put off its character, and assume discretionary or despotic powers which the Constitution has denied to it. It cannot create for itself a new character separated from the citizens of the United States, and the duties it owes them under the provisions of the Constitution. The Territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out; and the Federal Government can exercise no power over his person or property, beyond what that instrument confers, nor lawfully deny any right which it has reserved.

A reference to a few of the provisions of the Constitution will illustrate this proposition.

For example, no one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people of the Territory peaceably to assemble, and to petition the Government for the redress of grievances.

Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel any one to be a witness against himself in a criminal proceeding.

These powers, and others, in relation to rights of person, which it is not necessary here to enumerate, are, in express and positive terms, denied to the General Government; and the rights of private property have been guarded with equal care. Thus the rights of property are united with the rights of person, and placed on the same ground by the fifth amendment to the Constitution, which provides that no person shall be deprived of life, liberty, and property, without due process of law. And an act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law.

So, too, it will hardly be contended that Congress could by law quarter a soldier in a house in a Territory without the consent of the owner, in time of peace; nor in time of war, but in a manner prescribed by law. Nor could they by law forfeit the property of a citizen in a Territory who was convicted of treason, for a longer period than the life of the person convicted; nor take private property for public use without just compensation.

The powers over person and property of which we speak are not only not granted to Congress, but are in express terms denied, and they are forbidden to exercise them. And this prohibition is not confined to the States, but the words are general, and extend to the whole territory over which the Constitution gives it power to legislate, including those portions of it remaining under Territorial Government, as well as that covered by States. It is a total absence of power everywhere within the dominion of the United States, and places the citizens of a Territory, so far as these rights are concerned, on the same footing with citizens of the States, and guards them as firmly and plainly against any inroads which the General Government might attempt, under the plea of implied or incidental powers. And if Congress itself cannot do this—if it is beyond the powers conferred on the Federal Government—it will be admitted, we presume, that it could not authorise a Territorial Government to exercise them. It could confer no power on any local Government, established by its authority, to violate the provisions of the Constitution.

It seems, however, to be supposed, that there is a difference between property in a slave and other property, and that different rules may be applied to it in expounding the Constitution of the United States. And the laws and usages of nations,

and the writings of eminent jurists upon the relation of master and slave and their mutual rights and duties, and the powers which Governments may exercise over it, have been dwelt upon in the argument.

But in considering the question before us, it must be borne in mind that there is no law of nations standing between the people of the United States and their Government, and interfering with their relation to each other. The powers of the Government, and the rights of the citizen under it, are positive and practical regulations plainly written down. The people of the United States have delegated to it certain enumerated powers, and forbidden it to exercise others. It has no power over the person or property of a citizen but what the citizens of the United States have granted. And no laws or usages of other nations, or reasoning of statesmen or jurists upon the relations of master and slave, can enlarge the powers of the Government, or take from the citizens the rights they have reserved. And if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the Government.

Now, as we have already said in an earlier part of this opinion, upon a different point, the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guarantied to the citizens of the United States, in every State that might desire it, for twenty years. And the Government in express terms is pledged to protect it in all future time, if the slave escapes from his owner. This is done in plain words—too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

Upon these considerations, it is the opinion of the court that the act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident.

We have so far examined the case, as it stands under the Constitution of the United States, and the powers thereby delegated to the Federal Government.

But there is another point in the case which depends on State power and State law. And it is contended, on the part of the plaintiff, that he is made free by being taken to Rock Island, in the State of Illinois, independently of his residence in the territory of the United States; and being so made free, he was not again reduced to a state of slavery by being brought back to Missouri.

Our notice of this part of the case will be very brief; for the principle on which it depends was decided in this court, upon much consideration in the case of Strader et al. *v.* Graham, reported in 10th Howard, 82. In that case, the slaves had been taken from Kentucky to Ohio, with the consent of the owner, and afterwards brought back to Kentucky. And this court held that their *status* or condition, as free or slave, depended upon the laws of Kentucky, when they were brought back into that State, and not of Ohio; and that this court had no jurisdiction to revise the judgment of a State court upon its own laws. This was the point directly before the court, and the decision that this court had not jurisdiction turned upon it, as will be seen by the report of the case.

So in this case. As Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his *status*, as free or slave, depended on the laws of Missouri, and not of Illinois.

It has, however, been urged in the argument, that by the laws of Missouri he was free on his return, and that this case, therefore, cannot be governed by the case of Strader et al. *v.* Graham, where it appeared, by the laws of Kentucky, that the plaintiffs continued to be slaves on their return from Ohio. But whatever doubts or opinions may, at one time, have been entertained upon this subject, we are satisfied, upon a careful examination of all the cases decided in the State courts of

Missouri referred to, that it is now firmly settled by the decisions of the highest court in the State, that Scott and his family upon their return were not free, but were, by the laws of Missouri, the property of the defendant; and that the Circuit Court of the United States had no jurisdiction, when, by the laws of the State, the plaintiff was a slave, and not a citizen.

Moreover, the plaintiff, it appears, brought a similar action against the defendant in the State Court of Missouri, claiming the freedom of himself and his family upon the same grounds and the same evidence upon which he relies in the case before the court. The case was carried before the Supreme Court of the State; was fully argued there; and that court decided that neither the plaintiff nor his family were entitled to freedom, and were still the slaves of the defendant; and reversed the judgment of the inferior State court, which had given a different decision. If the plaintiff supposed that this judgment of the Supreme Court of the State was erroneous, and that this court had jurisdiction to revise and reverse it, the only mode by which he could legally bring it before this court was by writ of error directed to the Supreme Court of the State, requiring it to transmit the record to this court. If this had been done, it is too plain for argument that the writ must have been dismissed for want of jurisdiction in this court. The case of Strader and others *v.* Graham is directly in point; and, indeed, independent of any decision, the language of the 25th section of the act of 1789 is too clear and precise to admit of controversy.

But the plaintiff did not pursue the mode prescribed by law for bringing the judgment of a State court before this court for revision, but suffered the case to be remanded to the inferior State court, where it is still continued, and is, by agreement of parties, to await the judgment of this court on the point. All of this appears on the record before us, and by the printed report of the case.

And while the case is yet open and pending in the inferior State court, the plaintiff goes into the Circuit Court of the United States, upon the same case and the same evidence, and against the same party, and proceeds to judgment, and then brings here the same case from the Circuit Court, which the law would not have permitted him to bring directly from the State court. And if this court takes jurisdiction in this form, the result, so far as the rights of the respective parties are concerned, is in every respect substantially the same as if it had in open violation of law entertained jurisdiction over the judgment of the State court upon a writ of error, and revised and reversed its judgment upon the ground that its opinion upon the question of law was erroneous. It would ill become this court to sanction such an attempt to evade the law, or to exercise an appellate power in this circuitous way, which it is forbidden to exercise in the direct and regular and invariable forms of judicial proceedings.

Upon the whole, therefore, it is the judgment of this court, that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it. Its judgment for the defendant must, consequently, be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction.

APPENDIX.

[From the New York Day-Book, Nov. 10, 1857.]

NATURAL HISTORY OF THE PROGNATHOUS SPECIES OF MANKIND.

BY DR. SAMUEL A. CARTWRIGHT, OF NEW ORLEANS.

It is not intended by the use of the term Prognathous to call in question the black man's humanity or the unity of the human races as a *genus*, but to prove that the species of the genus homo are not a unity, but a plurality, each essentially different from the others—one of them being so unlike the other two—the oval-headed Caucasian and the pyramidal-headed Mongolian—as to be actually prognathous, like the brute creation; not that the negro is a brute, or half man and half brute, but a genuine human being, anatomically constructed, about the head and face, more like the monkey tribes and the lower order of animals than any other species of the genus man. Prognathous is a technical term derived from *pro*, before, and *gnathos*, the jaws, indicating that the muzzle or mouth is anterior to the brain. The lower animals, according to Cuvier, are distinguished from the European and Mongol man by the mouth and face projecting further forward in the profile than the brain. He expresses the rule thus: *face anterior, cranium posterior.* The typical negroes of adult age, when tried by this rule, are proved to belong to a different species from the man of Europe or Asia, because the head and face are anatomically constructed more after the fashion of the simiadiæ and the brute creation than the Caucasian and Mongolian species of mankind, their mouth and jaws projecting beyond the forehead containing the anterior lobes of the brain. Moreover, their faces are proportionally larger than their crania, instead of smaller, as in the other two species of the genus man. Young monkeys and young negroes, however, are not prognathous like their parents, but become so as they grow older. The head of the infant ourang outang is like that of a well formed Caucasian child in the projection and height of the forehead and the convexity of the vertex. The brain appears to be larger than it really is, because the face, at birth, has not attained its proportional size. The face of the Caucasian infant is a little under its proportional size when compared with the cranium. In the infant negro and ourang outang it is greatly so. Although so much smaller in infancy than the cranium, the face of the young monkey ultimately outgrows the cranium; so, also, does the face of the young negro, whereas in the Caucasian, the face always continues to be smaller than the cranium. The superfices of the face at puberty exceeds that of the hairy scalp both in the negro and the monkey, while it is always less in the white man. Young monkeys and young negroes are superior to white children of the same age in memory and other intellectual faculties. The white infant comes into the world with its brain inclosed by fifteen disunited bony plates—the occipital bone being divided into four parts, the sphenoid into three, the frontal into two, each of the two temporals into two, which, with the two parietals, make fifteen plates in all—the vomer and ethmoid not being ossified at birth. The bones of the head are not only disunited, but are more or less overlapped at birth, in consequence of the largeness of the Caucasian child's head and the smallness of its mother's pelvis, giving the head an elongated form, and an irregular, knotty feel to the touch. The negro infant, however, is born with a small, hard, smooth, round head like a gourd. Instead of the frontal and temporal bones being divided into six plates, as in the white child, they form but one bone in the negro infant. The head is not only smaller than that of the white child, but the pelvis of the negress is wider than that of the white woman—its greater obliquity also favors parturition and prevents miscarriage.

Negro children and white children are alike at birth in one remarkable particular—they are both born *white*, and so much alike, as far as color is concerned, as scarcely to be distinguished from each other. In a very short time, however, the skin of the negro infant begins to darken and continues to grow darker until it becomes of a shining black color, provided the child be healthy. The skin will become black whether exposed to the air and light or not. The blackness is not of as deep a shade during the first years of life, as afterwards. The black color is not so deep in the female as in the male, nor in the feeble, sickly negro as in the robust and

healthy. Blackness is a characteristic of the prognathous species of the genus homo, but all the varieties of all the prognathous species are not equally black. Nor are the individuals of the same family or variety equally so. The lighter shades of color, when not derived from admixture with Mongolian or Caucasian blood, indicate degeneration in the prognathous species. The Hottentots, Bushmen and aborigines of Australia are inferior in mind and body to the typical African of Guinea and the Niger.

The typical negroes themselves are more or less superior or inferior to one another precisely as they approximate to or recede from the typical standard in color and form, due allowance being made for age and sex. The standard is an oily, shining black, and as far as the conformation of the head and face is concerned and the relative proportion of nervous matter outside of the cranium to the quantity of cerebral matter within it, is found between the simiadiæ and the Caucasian. Thus, in the typical negro, a perpendicular line, let fall from the forehead, cuts off a large portion of the face, throwing the mouth, the thick lips, and the projecting teeth anterior to the cranium, but not the entire face, as in the lower animals and monkey tribes. When all, or a greater part of the face is thrown anterior to the line, the negro approximates the monkey anatomically more than he does the true Caucasian; and when little or none of the face is anterior to the line, he approximates that mythical being of Dr. Van Evrie, a *black white man*, and almost ceases to be a negro. The black man occasionally seen in Africa, called the *Bature Dudu*, with high nose, thin lips, and long straight hair, is not a negro at all, but a Moor tanned by the climate—because his children, not exposed to the sun, do not become black like himself. The typical negro's nervous system is modelled a little different from the Caucasian and somewhat like the ourang outang. The medullary spinal cord is larger and more developed than in the white man, but less so than in the monkey tribes. The occipital foramen, giving exit to the spinal cord, is a third longer, says Cuvier, in proportion to its breadth, than in the Caucasian, and is so oblique as to form an angle of 30° with the horizon, yet not so oblique as in the simiadiæ, but sufficiently so to throw the head somewhat backwards and the face upwards in the erect position. Hence, from the obliquity of the head and the pelvis, the negro walks steadier with a weight on his head, as a pail of water for instance, than without it; whereas, the white man, with a weight on his head, has great difficulty in maintaining his centre of gravity, owing to the occipital foramen forming no angle with the cranium, the pelvis, the spine, or the thighs—all forming a straight line from the crown of the head to the sole of the foot without any of the obliquities seen in the negro's knees, thighs, pelvis and head—and still more evident in the ourang outang.

The nerves of organic life are larger in the prognathous species of mankind than in the Caucasian species, but not so well developed as in the simiadiæ. The brain is about ⅛ tenth smaller in the prognathous man than in the Frenchman, as proved by actual measurement of skulls by the French savans, Palisot and Virey. Hence, from the small brain and the larger nerves, the digestion of the prognathous species is better than that of the Caucasian and its animal appetites stronger, approaching the simiadæ but stopping short of their beastiality. The nostrils of the prognathous species of mankind open higher up than they do in the white or olive species, but not so high up as in the monkey tribes. In the gibbon, for instance, they open between the orbits. Although the typical negro's nostrils open high up, yet owing to the nasal bones being short and flat, there is no projection or prominence formed between his orbits by the bones of the nose, as in the Caucasian species. The nostrils, however, are much wider, about as wide from wing to wing, as the white man's mouth from corner to corner, and the internal bones, called the turbinated, on which the olfactory nerves are spread, are larger and project nearer to the opening of the nostrils than in the white man. Hence the negro approximates the lower animals in his sense of smell, and can detect snakes by that sense alone. All the senses are more acute, but less delicate and discriminating, than the white man's. He has a good ear for melody but not for harmony, a keen taste and relish for food but less discriminating between the different kinds of esculent substances than the Caucasian. His lips are immensely thicker than any of the white race, his nose broader and flatter, his chin smaller and more retreating, his foot flatter, broader, larger, and the heel longer, while he has scarcely any calves at all to his legs when compared to an equally healthy and muscular white man. He does not walk flat on his feet but on the outer sides, in consequence of the sole of the foot having a direction inwards, from the legs and thighs being arched outwards and the knees bent. The verb, from which his Hebrew name is derived, points out this flexed positio of

the knees, and also clearly expresses the servile type of his mind. Ham, the father of Canaan, when translated into plain English, reads that a black man was the father of the slave or knee-bending species of mankind.

The blackness of the prognathous race, known in the world's history as Canaanites, Cushites, Ethiopians, black men or negroes, is not confined to the skin, but pervades, in a greater or less degree, the whole inward man down to the bones themselves, giving the flesh and the blood, the membranes and every organ and part of the body, except the bones, a darker hue than in the white race. Who knows but what Canaan's mother may have been a genuine Cushite, as black inside as out, and that Cush, which means blackness, was the mark put upon Cain? Whatever may have been the mark set upon Cain, the negro, in all ages of the world, has carried with him a mark equally efficient in preventing him from being slain—the mark of blackness. The wild Arabs and hostile American Indians invariably catch the black wanderer and make a slave of him instead of killing him, as they do the white man.

Nich. Peehlin, in a work written last century entitled "*De cute Æthiopum*," Albinus, in another work, entitled "*De sede et causa coloris Æthiop*," as also the great German anatomists, Meiners, Ebel, and Sœmmering, all bear witness to the fact that the muscles, blood, membranes, and all the internal organs of the body, (the bones alone excepted,) are of a darker hue in the negro than in the white man. They estimate the difference in color to be equal to that which exists between the hare and the rabbit. Who ever doubts the fact, or has none of those old and impartial authorities at hand—impartial because they were written before England adopted the policy of pressing religion and science in her service to place white American republican freemen and Guinea negroes upon the same platform—has only to look into the mouth of the first healthy typical negro he meets to be convinced of the truth, that the entire membraneous lining of the inside of the cheeks, lips and gums is of a much darker color than in the white man.

The negro, however, must be healthy and in good condition—sickness, hard usage and chronic ailments, particularly that cachescia, improperly called consumption, speedily extracts the coloring matter out of the mucous membranes, leaving them paler and whiter than in the Caucasian. The bleaching process of bad health or degeneration begins in the blood, membranes and muscles, and finally extracts so much of the coloring pigment out of the skin, as to give it a dull, ashy appearance, sometimes extracting the whole of it, converting the negro into the albino. Albinoism or cucosis does not necessarily imply hybridism. It occurs among the pure Africans from any cause producing a degeneration of the species. Hybridism, however, is the most prolific source of that degeneration. Sometimes the degeneration shows itself by white spots, like the petals of flowers, covering different parts of the skin. The Mexicans are subject to a similar degeneration, only that the spots and stripes are black instead of white. It is called the pinto with them. Even the pigment of the iris and the coloring matter of the Albino's hair absorbed, giving it a silvery white appearance, and converting him into a clairvoyant at night. According to Professors Brown, Seidy and Gibbs, the negro's hair is not tubular, like the white man's, but it is excentrically eliptical with flattened edges, the coloring matter residing in the epidermis and not in tubes. In the place of a tube, the shaft of each hair is surrounded with a scaly covering like sheep's wool, and, like wool, is capable of being felted. True hair does not possess that property. The degeneration called Albinoism has a remarkable influence upon the hair, destroying its coarse, nappy, wooly appearance, and converting it into fine, long, soft, silky, curly threads. Often, the whole external skin, so remarkably void of hair in the healthy negro, becomes covered with a very fine, silky down, scarcely perceptible to the naked eye, when transformed into the Albino.

Mr. Bowen, the celebrated Baptist missionary, (see his work entitled Central Africa and Missionary Labors from 1849 to 1856, by T. J. Bowen, Charleston, Southern Baptist Publication Society, 1857,) met with a great many cases of leucosis in Soudan or Negroland back of Liberia, and erroneously concluded that these people had very little, if any negro blood in them, and would be better subjects for missionary labors than the blacks of the same country. They are, however, nothing but *white* black men, a degeneration of the negro proper, and are even less capable of perpetuating themselves than the hybrids or mulattoes. Mr. Bowen is at a loss to account for the depopulation, which he verifies has been going on in Soudan the last fifty years, threatening to leave the country, at no distant time, bare of inhabitants, unless roads be constructed by the Christians of the southern States for commercial intercourse, and double exertions made to civilise and Christianise the waning population of Central Africa before it entirely disappears. The good missionary, though sent out from Georgia, was evidently taught in that British school which assumes that there is only a single species in the genus homo, in opposition to the Bible, that clearly designates three. That school quotes the references in the sacred volume, implying unity in the genus—a unity which no one denies—to disprove the existence of distinct species, and upon this fallacy builds the theory that negro, Indian and white men are beings exactly alike, because they are human beings. *Ergo*, the liberty so beneficial to the white man, would be equally so to the negro—disregarding as a fable those words of the Bible expressly declaring that the latter *shall be servant of servants* to the former—words which would not have been there if that kind of subordination called slavery was not the normal condition of the race of Ham. To expect to civilise or Christianise the negro without the intervention of slavery is to expect an impossibility.

Mr. Bowen's experience and natural good sense occasionally got the better of his theoretical views. Thus, at page 90, we find him confessing that "the native African negroes ought to have masters in obedience to the demands of natural justice." At page 149 he lets us into the secret of the depopulating process which has been going on in Central Africa the last fifty years. While standing among some negroes in Ikata, a town in Central Africa, a capricious mulatto chief sent some officers among the company, who singled out a poor fellow who had offended the chief by saying that as he let a white man into town, he might let in a Dahomey man also, and presented him with an empty bag with the message, "*The king says you must send me your head.*" The Rev. missionary, who was present at the beheading, made no comment further than to state the fact. But he might have added that the blood of that negro, and millions of others, will be required at

the hands of Victoria Regina and the United States for having officiously destroyed the value of negro property in Africa by breaking up the only trade that ever protected the native Africans against the butcheries, cruelties and oppressions of their mulatto, Moorish and Mahommedan tyrants. It is these butcheries and cruelties, and the little care taken of the black man in Africa, the last fifty years, since he became valueless through British and American philanthropy, that lie at the root of the depopulating process which is going on in the dark land of the Niger. Empty bags are now filled with heads instead of cowries. Mr. Bowen was surprised to see so few black men in Soudan, where, half a century ago, he says they were so numerous. But he rather regards it as a fortunate circumstance, as he has no hope of christianising the typical negro, except through slavery to Christian masters—and that idea is abhorrent to the school in which he was taught; but he has more hope from the mixed races, and these, he confesses, cannot be effectually christianised until civilised. He deplores the bad example of the black race, among them, their polygamy, &c., as greatly in the way of civilising the mulattoes. But he has overlooked the important fact, as many do, that the existence of the hybrids themselves depends upon the existence of the typical Africans. The extinction of the latter must, of necessity, be soon followed by the extinction of the former, as they cannot, for any length of time, propagate among themselves.

Mr. Bowen inferred that the negroes of Central Africa, although diminishing in numbers, are rising higher in the scale of humanity, from the very small circumstance that they do not emit from their bodies so strong and so offensive an odor as the negro slaves of Georgia and the Carolinas do, nor are their skins of so deep a black. This is a good illustration of the important truth, that all the danger of the slavery question lies in the ignorance of Scripture and the natural history of the negro. A little acquaintance with the negro's natural history would prove to Mr. Bowen that the strong odor emitted by the negro, like the deep pigment of the skin, is an indication of high health, happiness, and good treatment, while its deficiency is a sure sign of unhappiness, disease, bad treatment, or degeneration. The skin of a happy, healthy negro is not only blacker and more oily than an unhappy, unhealthy one, but emits the strongest odor when the body is warmed by exercise and the soul is filled with the most pleasurable emotions. In the dance called *patting juber*, the odor emitted from the men, intoxicated with pleasure, is often so powerful as to throw the negro women into paroxysms of unconsciousness, vulgo hysterics. On another point of much importance there is no practical difference between the Rev. missionary and that clear-headed, bold, and eccentric old Methodist, Dr. McFarlane. Both believe that the Bible can do ignorant, sensual savages no good; both believe that nothing but compulsatory power can restrain uncivilised barbarians from polygamy, inebriety, and other sinful practices.

The good missionary, however, believes in the possibility of civilising the inferior races by the money and means of the Christian nations lavishly bestowed, after which he thinks it will be no difficult matter to convert them to Christianity. Whereas the venerable Methodist believes in the impossibility of civilising them, and therefore concludes that the Written Word was not intended for those inferior races who cannot read it. When the philosophy of the progmathous species of mankind is better understood, it will be seen how they, the lowest of the human species, can be made partakers, equally with the highest, in the blessings and benefits of the Written Word of God. The plantation laws against polygamy, intoxicating drinks and other besetting sins of the negro race in the savage state, are gradually and silently converting the African barbarian into a moral, rational and civilised being, thereby rendering the heart a fit tabernacle for the reception of Gospel truths. The prejudices of many, perhaps the majority of the southern people, against educating the negroes they hold in subjection, arise from some vague and indefinite fears of its consequences, suggested by the Abolition and British theories built on the false assumption that the negro is a white man with a black skin. If such an assumption had the smallest degree of truth in it, the more profound the ignorance and the deeper sunk in barbarism the slaves were kept, the better it would be for them and their masters. But experience proves that masters and overseers have nothing at all to fear from civilised and intelligent negroes and no trouble whatever in managing them—that all the trouble, insubordination and danger arise from the uncivilised, immoral, rude, and grossly ignorant portion of the servile race. It is not the ignorant semi-barbarian that the master or overseer entrusts with his keys, his money, his horse or his gun, but the most intelligent on the plantation—one whose intellect and morals have undergone the best training. An educated negro, one whose intellect and morals have been cultivated, is worth double the price of the wild, uncultivated, black barbarian of Cuba, and will do twice as much work, do it better and with less trouble.

The prejudices against educating the negroes may also be traced to the neglect of American divines in making themselves acquainted with Hebrew literature. What little the most of them know of the meaning of the untranslated terms occuring in the Bible, and the signification of the verbs from which they are derived, is mostly gathered from British commentators and glossary makers, who have blinked the facts that disprove the Exeter Hall dogma, that negro slavery is sin against God. Hence, even in the South, the important biblical truth, that the white man derives his authority to govern the negro from the Great Jehovah, is seldom proclaimed from the pulpit. If it were proclaimed, the master race would see deeper into their responsibilities and look closer into the duties they owe to the people whom God has given them as an inheritance, and their children after them, so long as time shall last. That man has no faith in the Scriptures who believes that education could defeat God's purposes, in subjecting the black man to the government of the white. On the contrary, experience proves its advantages, to both parties. Aside and apart from Scripture authority, natural history reveals most of the same facts, in regard to the negro that the Bible does. It proves the existence of at least three distinct species of the genus man, differing in their instincts, form, habits and color. The white species having qualities denied to the black—one with a free and the other with a servile mind—one a thinking and reflective being, the other a creature of feeling and imitation, almost void of reflective faculties, and consequently unable to provide for and take care of himself. The relation of master and slave would naturally spring up between two such different species of men, even if there was no Scripture authority to support it. The relation thus established, being natural, would be drawn closer together, instead of severed, by the inferior imitating the superior in all his ways, or in other words, acquiring an education.

SPEECH OF
HON. ISRAEL WASHBURN, JUN.,
OF MAINE

Delivered in the House of Representatives, May 19, 1860.
The Issues: The Dred Scott Decision: The Parties

Volume III

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SPEECH

OF

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Delivered in the House of Representatives, May 19, 1860.

—o—

Mr. CHAIRMAN:

"Queen Elizabeth equipped two vessels for her own sole profit, in which two vessels, escorted by the fleet under the command of Hawkins, were the first unhappy blacks inveigled from their shores by Englishmen, and doomed to end their lives in servitude. Elizabeth was avaricious and cruel; but a small segment of her heart had a brief sunshine on it, darting obliquely. We are under a King [George III] notoriously more avaricious; one who passes without a shudder the gibbets his sign-manual has garnished; one who sees on the fields of the most disastrous battles, battles in which he ordered his people to fight his people, nothing else to be regretted than the loss of horses and saddles, of haversacs and jackets. If this insensate and insatiable man even hears that Queen Elizabeth was a slave-dealer, he will assert the inalienable rights of the Crown, and swamp your motion."

I have read from an "Imaginary Conversation" between Romilly and Wilberforce, by Walter Savage Landor, the statement of an actual fact. The words are understood to have been spoken by Romilly.

In the original draft of the Declaration of Independence, Thomas Jefferson wrote:

"He [George III] has waged cruel war against human nature itself, violating its most sacred rights of life and liberty, in the persons of a distant people, who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of infidel Powers, is the warfare of the Christian King of Great Britain. Determined to keep a market where men should be bought and sold, he has at length prostituted his negative for suppressing any legislative attempt to prohibit and restrain this execrable commerce."

Thus we learn that under the authority and by the aid of the sovereigns of Great Britain, from Elizabeth to the third George, black men were brought from Africa to the British American colonies, and reduced to the condition of slaves. And thus, at the close of the Revolutionary war, chattel slavery existed in all the States but one that were to form the new Confederacy. It was an undoubted evil; indeed, its removal was one of the great objects for which the war was commenced and prosecuted. Under the influence of the truths which so filled and informed the minds of men at that time, and by the authority of the new sovereignties, it was scarcely doubted in any quarter that the system, so inexpedient and full of evil, so unprofitable and wrong, would die out or be exterminated. It could not, men thought, be otherwise. In consequence of the unsettled and impoverished condition of the country, it would no doubt take some time to accomplish an end so desirable and so certain; but the will and the determination should not be wanting; and so our ancestors, when the war was over, set themselves at work earnestly and in good faith to effect the amelioration and ultimate extinction of this evil. By an ordinance which Mr. Webster said should make its author immortal, they excluded slavery from all the territory of the Government lying north and west of the Ohio river. They framed a Constitution "to establish justice," and "secure the blessings of liberty" for themselves and their posterity; and among those by whose votes the Constitution was adopted, and for whom, as well as others, it must have been intended, were colored men of African descent, residing in several of the States South and North. In that Constitution they sedulously excluded the idea that men were, or could rightfully be made, property; they would not dishonor that consummate fruit of their toils and sacrifices by the use of the words "slave" and "servitude;" they treated human beings as persons—men, and not as things; they provided for the abolition of the slave trade at the earliest practicable moment. While they recognised no distinction of color or race, and, in the numeration of persons for purposes of Federal representation, counted alike members of the European and African races, they dis-

couraged the system of servile labor, by imposing upon the States which continued it, terms in respect to such representation, which it was supposed would tend to bring it into disfavor, and so hasten its abolition. Sir, the men of that day did the best they could; they were sincere, and they were earnest. They gave to liberty all the securities and threw around slavery all the limitations and disabilities in their power. They worked hopefully for the hour when emancipation was to begin in all the States; they waited in faith and implicit trust, never seeming to doubt that the time for their deliverance was near at hand. But the weakness of the country, just emerged from a long and exhausting war, the condition of its relations with foreign Powers, the spoliations of its commerce, the embarrassments in its trade, the necessity of extending protection to its frontier settlements, the internal strifes contingent upon the formation of parties under the new Government, furnished excuses to the States in which slaveholding was most largely practiced, for postponing the work, the wisdom and duty of which they still affirmed. Their views as to the impolicy and wrongfulness of slavery they protested were unchanged; but the longer they felt compelled by circumstances to delay the work of abolition, the more formidable and difficult did it become. Louisiana was purchased in 1803, and Florida in 1819, by which acquisitions the slaveholding territory of the United States was largely expanded. Mr. Whitney invented the cotton-gin, and the production of cotton, largely increased in consequence thereof, gave employment to and enhanced the value of slave labor. Thus events and circumstances unpropitious to the performance of what was still acknowledged to be a stern duty, succeeded one another, year after year, until, at length, the system was so extended, and its proportions were so vast, that those most interested in its overthrow were the least ready to give their minds to a serious and practical consideration of the question, when and how this was to be accomplished. As the labor and difficulty of the undertaking loomed up before them, the expediency and duty of engaging in it became less clear and dominant.

It was not before a very general indifference appeared among the slaveholders in regard to the continuance of their system—indeed, it was not until they began to furnish evidence of a fixed design to carry it where it had never been before, and to plant it upon the free territory of the United States—that Northern people perceived how much they were interested in the question of slavery, and that they could not safely or with honor permit the purposes of the slaveholders to go unchecked; that they could not be unconcerned spectators while their interests were assailed, their rights invaded, and the welfare and good name of the country imperilled. The slavery controversy between the North and South arose only when the latter abandoned the policy upon which both had been agreed—not until the claims of the South were seen to be inconsistent with the rights of the North. But even then those claims were not asserted upon the ground of the absolute rightfulness of slavery, but upon considerations of convenience, temporary expediency, and good neighborhood. Slavery, it was conceded, was not right in the abstract; it was not to exist always; it was an evil undoubtedly, and in the good Providence of Heaven some way would be found by-and-by for its removal. Meanwhile, so it was urged, it must be tolerated, it must not be warred upon, and Northern people were informed that, however they might dislike it, and very properly dislike it, they must be careful not to oppose it by any means not clearly legitimate and constitutional. We do not affirm, said the South, that slavery is a good thing in itself, but we do insist that, under the Constitution, Congress has no power to exclude it from the common domain of the country, and we demand that the people of the free States shall employ no unlawful means to prevent its expansion; whatever you of the North may properly do, under the Constitution, we shall not object to; if slavery be an evil, it does not lie with us, or with anybody, to complain if you attempt to restrict and cripple it; this is your right and duty; but you must not attempt its inhibition or injury by any methods not warranted by the Constitution.

The political party which for many years had held possession of the Government, and controlled the legislation of the country, was, for this reason, and with a large foresight, regarded by the slaveholders as the organization through which they could obtain better protection to their peculiar claims and demands than through any other; and so we find that they attached themselves so generally to the Democratic party, that, in the course of a few years, the seat of its great and ever-reliable strength was established in the slave States; and these, not unnaturally, were permitted to make its issues, shape its policy, and name its candidates for the principal offices in the Republic. Thus, when the slaveholders, some twelve or fifteen years ago, and for the first time since the organization of Government, *formally* proclaimed the doctrine, that Congress had no power to prohibit slavery in the Territories, its Northern chieftain [General Cass] hurried to accept it, adding, for the benefit of party friends in his own section, that this power resided only with the people of the Territories, and that they had an undoubted right to form and regulate their domestic institutions, including slavery, in their own way. As it was considered by the slaveholders that the doctrine, with this qualification, was all that would be necessary for the extension of their system into the Territories, they were contented to receive it without objection, although they did not affirmatively adopt it. It was generally recognised, however, as the true Democratic

doctrine, and was acted upon, in 1850, in the organization of the Territories of New Mexico and Utah; in 1852, it was affirmed in the national Democratic Convention; and in 1854, when the Territories of Kansas and Nebraska were organized, it was so distinctly a dogma of the Democratic party, that it did not hesitate to abrogate a law for the prohibition of slavery, which had stood for more than thirty years upon the statute book, and which, from the circumstances of its enactment, had been universally regarded as hedged around with all the sacredness of a compact. But this time-honored restriction was made to give way before the "great principle of 'popular sovereignty.'" Nevertheless, the "great principle" failed to accomplish the end whereunto it was directed. Kansas was made a free State, the invention of "popular sovereignty" was discarded as worthless, and its patentees, the present Secretary of State, [General Cass,] and the Senator from Illinois, [Mr. DOUGLAS]—that their title is a joint one, is confirmed by the fortune that has attended them—were left to console themselves with the reflection, that the rascally machine had wrought even greater harm to those for whom they contrived it than it had to themselves!

Finding, at last, after many experiments and trials, that the practice of slavery was not to be extended and promoted by any measures or through any policy founded upon, or consistent with, the admission that *it is an evil*—discovering the futility of all efforts to advance and strengthen it from this starting point—the slaveholders, abandoning the policy which they had hitherto pursued, denying and scouting the opinions of their predecessors—of all the men in the South, down to a period comparatively recent—now declare that slavery is *not an evil*, is not wrong, but is wise, just, expedient, humane, divine; that it is established in natural law, and has the sanction and benedictions of Almighty God. And, sir, such is their influence and authority in the Democratic party, that it has, at their demand, accepted these atrocious dogmas as eternal verities, and made them the distinctive and all-essential part of its platform, as will be seen hereafter.

Thus Mr. Chairman, I have endeavored to show briefly how it has happened, that within a little more than seventy years after the formation of the Constitution, in which was embodied the principles of the Revolution, we find ourselves brought to a reconsideration of those principles, and to an inquiry in regard to the foundations upon which they rest.

In matters of Government and politics, it is fortunate perhaps that, at periods not greatly removed from each other, the attention of men is arrested by the enunciation of strange and monstrous doctrines, and their quiet disturbed by the assertion of claims and purposes of the most dangerous and alarming character, for in this way they are brought to a consideration of the reason and logic of things, of elementary truths, of principles. Thus they are led to explore the sources of power, to discover and define its conditions and boundaries, and renew its landmarks. Gathering strength and inspiration from the great soul of Truth, to which they bring themselves near, their voice becomes the voice of God. They arouse and inform the public mind, they quicken the public heart; the banner of controversy is unrolled, and the end is, that the wrong is overthrown and the right vindicated, and people feel that henceforward,

"Noble thought shall be freer under the sun,
And the heart of a people beat with one desire."

Mr. Chairman, there can be little doubt that the Democratic party, as it is called, acting under the guidance of the oligarchy of Southern slaveholders, has succeeded in thoroughly alarming the public mind by the doctrines it proclaims and the designs its avows.

Thus, sir, I am brought to an examination of the issues before the people in the great political canvass of this year—the real and true issues upon which the parties will go to the country.

The Democratic party, controlled, as it is in all its movements and aspirations, by an inexorable oligarchy which acts as one man in defence of a common interest, has become, as we have seen, the exponent of ideas and opinions in direct conflict with those of the revolutionary fathers, and of the apostles and champions of liberty and human rights in all lands and in every age.

The issues which this party presents may be concisely and truly stated in these words: *The fathers were wrong; republicanism is a sham; democracy is a falsehood.*

Sir, there is not a single political truth affecting the rights of man, asserted by the great men of the revolutionary epoch, which this party does not deny, not an opinion in regard to fundamental principles which it does not scoff at. The fathers held chattel slavery, the merchandising of men, to be wrong; the Democratic party says it is right. The former regarded it as an evil; the latter vaunt it as a blessing. The fathers hoped and believed it would be of but temporary duration; the Democratic party (for without the slaveholders this party is nothing, and less than nothing, and vanity) declare that it ought to be and shall be perpetual.

The brave men of old, who pledged life, fortune, and honor, to their country and to truth, declared that "ALL MEN ARE CREATED EQUAL;" they thought, in the simplicity of their souls, that this truth was so plain as to be "self-evident;" but the Democratic party pronounces the assertion a "*self-evident lie.*" The men of 1776 declared that among the NATURAL AND "INALIENABLE RIGHTS OF ALL MEN WERE LIFE, LIBERTY, AND THE PURSUIT OF HAPPINESS;" the Democratic party sneers at this sublime truth, and calls it a "glittering general-

ity." Our republican forefathers maintained that "TO SECURE THESE RIGHTS, GOVERNMENTS WERE INSTITUTED AMONG MEN, DERIVING THEIR JUST POWERS FROM THE CONSENT OF THE GOVERNED;" the Democratic party insists that Governments are not instituted—that this Government, at any rate, was not instituted—to secure life, liberty, and happiness, to *all* men, but rather to secure and perpetuate a system of bondage the most galling and intolerable that exists upon the face of the earth; and that so far from Government deriving its just powers from the consent of the governed, there are millions of men in this country who have no right, natural or political, to give or withhold their consent upon any question affecting the Government. The framers of the Constitution have informed us that that instrument was ordained to "establish justice," and secure to the people the "blessings of liberty;" the Democratic party says that, so far from this being true, it was adopted for the purpose of recognising and affirming the idea—which Lord Brougham has denounced as a "guilty fantasy"—that man could hold property in man, and to enable the slaveholder to carry his manchattel into any of the Territories—and, I may add, States—of the Republic, and there, under its ægis, practice the greatest injustice that man can inflict upon his fellow man.

The men who formed our institutions believed that the legislative power of the Government was adequate to the exclusion of slavery from the territory belonging to the Government, and exercised that power, as a matter of conscience and duty, by reviving the ordinance of 1787, within a year after the adoption of the Constitution; but the Democratic party denies the power and duty alike, repeals the restrictions and breaks down the barriers interposed by the wisdom and humanity of the fathers, that slavery, the "chartered libertine," may go free as the winds.

The fathers established the Union for the sake of liberty; the managers of the Democratic party say they will destroy it unless they can extend slavery.

Mr. Chairman, Mr. Jefferson and his compeers taught, and the old Republican party held, that the people were the only depositories of political power, and that with them was the ultimate decision of all political questions; but the Democratic party rejects this old republican doctrine, and maintains that the Constitution has created a tribunal, and placed it above and beyond the people, to which it has delegated the authority to decide, finally and conclusively, all questions of political right and power. This tribunal is the Supreme Court of the United States, and, as at present constituted, is composed of nine judges, of whom a majority are citizens of slave States, and are slaveholders. Here are our masters; here is supreme, despotic, irresponsible power. If there be a tribunal anywhere which can decide all questions affecting the powers and functions of the Government and the rights of the people, without appeal—which may declare that the Constitution was not made for Africans, or Frenchmen, or Germans, or Irishmen, but for slaveholders only, and the people must submit—that under the pretext of protecting all the institutions and systems guarantied or recognised (according to their own decisions) by the Constitution, men who shall dare utter or publish views and sentiments adverse to such systems, may, by law of Congress, be brought to trial, conviction, and punishment, as criminals, even as traitors; that the system of slavery, with all its mischiefs and abominations, is national and universal, and beyond the power of the States or of the people; if, sir, I say, there be a power anywhere so tremendous as this, we are no longer living under a republican Government, and our land has ceased to be a land of liberty. But this awful and irresponsible power in a body of nine men is what the Democratic party is now bending all its energies to maintain.

Sir, Mr. Jefferson recognised no such authority in the Supreme Court. In a letter to Judge Roane, in 1819, he said:

"In denying the right they [the judges of the Supreme Court] usurp of exclusively explaining the Constitution, I go further than you do, if I understand rightly your quotation from the Federalist, of an opinion that 'the Judiciary is the last resort in relation *to the other departments* of the Government, but not in relation to the rights of the parties to the compact under which the Judiciary is derived.' If this opinion be sound, then, indeed, is our Constitution a complete *felo de se*. For, intending to establish three departments, co-ordinate and independent, that they might check and balance one another, it has given, according to this opinion, to one of them alone the right to prescribe rules for the government of the others; and to that one, too, which is unelected by and independent of the nation."

* * * "The Constitution, on this hypothesis, is a mere thing of wax, in the hands of the Judiciary, which they may twist and shape into any form they please. It should be remembered as *an axiom of eternal truth in politics, that whatever power in any Government is independent, is absolute also;* in theory only at first, while the spirit of the people is up, but in practice as fast as that relaxes. Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law."

In a letter written in 1820, to Mr. Jarvis, he used the following language:

"The Constitution has erected no such single tribunal, knowing that, to whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves."

To Judge Johnson he wrote, in 1823, these striking words:

"I cannot lay down my pen without recurring to one of the subjects of my former letter, for, in truth, there is no danger I apprehend so much as the consolidation of our Government by the noiseless, and therefore unalarming, instrumentality of the Supreme Court. This is the form in which *Federalism now arrays itself; and consolidation is the present principle of distinction between Republicans and pseudo-Republicans, but real Federalists.*"

And General Jackson entertained opinions in reference to the powers of the Supreme Court as little in harmony with the views and doctrines of the modern Democracy as are those I have quoted from Mr. Jefferson. In his message vetoing the bill for rechartering the Bank of the United States, he said:

"The opinion of the judges has no more authority over Congress than the opinion of Congress over the judges; and, on that point, the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve."

It is evident that the sage of Monticello, and the hero of the Hermitage, could they return to earth, would find no seats reserved for them at any Democratic banquet.

The Republicans of to-day stand with Mr. Jefferson and the old Republican party on this question, and not with the oligarchy for whose uses the so-called Democratic organization is kept up.

The Democratic party having made what they are pleased to call the Dred Scott decision the main plank of their platform, I propose to show what that decision is, what it implies, and what is its basis or foundation.

The facts in this case were as follows. I read from the report:

"In the year 1834, the plaintiff, Dred Scott, was a negro slave belonging to Dr. Emerson, who was a surgeon in the army of the United States. In that year, 1834, said Dr. Emerson took the plaintiff from the State of Missouri to the military post at Rock Island, in the State of Illinois, and held him there as a slave, until the month of April or May, 1836. At the time last mentioned, said Dr. Emerson removed the plaintiff from said military post at Rock Island to the military post at Fort Snelling, situate on the west bank of the Mississippi river, in the Territory known as Upper Louisiana, acquired by the United States of France, and situate north of the latitude of 36° 30′ north, and north of the State of Missouri; said Dr. Emerson held the plaintiff in slavery at Fort Snelling, from the said last-mentioned date until the year 1838. * * *

"In the year 1838, said Dr. Emerson removed the plaintiff from said Fort Snelling to the State of Missouri, where he has ever since resided."

In the year 1838, Dr. Emerson sold the plaintiff to the defendant, Sandford.

The defendant pleaded in abatement to the jurisdiction of the court, that the plaintiff was not a citizen of the State of Missouri, because he was a negro of African descent, and his ancestors were of pure African blood, and were brought into this country and sold as negro slaves.

The court sustained the plea in abatement, and decided that, conceding the plaintiff to be a freeman, he was not, under the Constitution, a citizen of the State of Missouri or of the United States, for the reason that he was a negro of African descent, and that his ancestors were of pure African blood, and brought to this country and sold as slaves. This adjudication of course terminated the case, and Dred Scott was turned out of court.

But after the court had thus made an end of the suit, and declared that there were no parties before them, the slaveholding majority proceeded to inquire whether in point of fact the plaintiff was a free man; and this brought them to a consideration of the question of the validity and constitutionality of the Missouri compromise restriction, and their opinion, which for convenience sake I shall hereafter speak of as a decision, although it was not a decision in any proper or legal sense, was, that this restriction was unconstitutional and void, and that Dred Scott remained a slave. Their opinion was clear and explicit, that neither Congress nor the people of a Territory had authority under the Constitution to legislate for the exclusion of slavery from any of the Territories of the United States. By the Constitution itself, they argued, slaves were recognised and known as property; "the right of property in slaves," they said, was "distinctly and expressly affirmed" in that instrument, and the only authority conferred upon Congress was "*the power* COUPLED WITH THE DUTY *of guarding and protecting the owner in his rights.*"

These judges readily admitted that, but for the constitutional sanction of slavery, it would be fully competent for Congress to legislate for its regulation or prohibition in the Territories. They stated that the court had decided in a previous case that the power of Congress to *govern* the Territories was "unquestionable," and added, "in this we entirely concur, and nothing will be found in this opinion to the contrary;" thus destroying, root and branch, the whole doctrine of popular or squatter sovereignty. But, inasmuch as the Constitution has taken hold of slaves as property, and thrown its protection and guaranties around that species of property, it results, they maintained, that Congress, which is itself the creature of the Constiution, cannot have power to destroy or impair that which the Constitution affirms and protects. Now, if it be true that slaves are property under the Constitution of the United States, which is the supreme law; that this instrument, which governs and controls, in respect to all questions upon which it speaks, within all the States, as well as Territories, attaches to a particular class of human beings the character and imprints upon them the stamp of property, and confers upon Congress "the power coupled with the duty of protecting this property," for the reason that it is property by a constitutional recognition, it will be difficult to resist the conclusion to which these judges have arrived; nay, it will be impossible to resist it, or that other conclusion to which this decision reaches, viz: THAT THIS KIND OF PROPERTY MAY BE TAKEN, HELD, USED, BOUGHT AND SOLD, IN EACH AND ALL OF THE STATES OF THE UNION. This result, inevitable from the Dred Scott decision, is what will be judicially asserted whenever the time shall come, and come it will if the Democratic party remains in power but a few years more, for raising the question—whenever, in the opinion of those who control the court, the time is ripe for such a decision—or, in other words, whenever the oligarchy shall believe that the Northern people will submit to it, and consent that every State in the Union shall be a slave State. The real and overshadowing question which by this decision is presented to the country is not

whether freedom is national, but is whether it has even a section where it may dwell; it is whether slavery is not national and universal.

It is clear that whatsoever is property by the highest law of the land is entitled to the rights, immunities, and protections of property, wherever that highest law prevails. The Constitution of the United States is in force in every State of the Union, and all laws of Congress, all laws of States, and all State Constitutions, which are in conflict with its provisions, are inoperative and void. If a slave is property by or under the authority of the Federal Constitution, this relation or character cannot be destroyed, or injuriously affected, by the Constitution of a State; for wherever and in whatever respect these Constitutions are inconsistent with each other, the latter must yield to the former. If the Constitution of the United States declares that a man held as a slave is property, he may be so held, treated, and regarded, in all places where that fundamental and supreme law is in operation; and a provision in the Constitution of the State of Maine, that there shall be no such thing as property in men within that State, cannot stand a moment against the Constitution of the United States, which says that there may be; and the theory of the practical exclusion of slavery by unfriendly legislation is fallacious and wholly inadmissible—it is as unsound as it is dishonest. If the chattelship of a slave is recognised and secured by the Constitution of the United States, it is something more than a merely nominal recognition, for a security which is merely nominal is no security at all. The constitutional guaranty or protection is of no account, if the States, or Territories, or Congress, may at their pleasure render that which is the subject of protection valueless, or not worth possessing. But if it should be conceded, as I will not deny it may be, that the State Legislatures and the legislative authorities for the Territories, whether Federal or local, may pass laws regulating the possession, use, sale, and enjoyment of property in general—if they may, by taxation or otherwise, render the holding of any particular kind of property unprofitable and burdensome, it does not follow that they have such power over slave property, and they have not if the Dred Scott decision be good law, and for this obvious reason—that of all things on earth, of all articles of all names, and descriptions of chattels, goods, wares, and possessions, (with the exception of slaves,) not one is made property by the Federal Constitution, not one is recognised in name or by implication as property. The Constitution recognises undoubtedly the idea of property, but the specific articles or things which shall be held and regarded as such, it does not name or indicate, with the single exception (if the doctrine of the judges of the Supreme Court and the Democratic party be sound) of negro slaves. It does not make horses property, or recognise them as property, and so it is entirely competent for any State or Territory, by its law-making power, to declare that there shall be within its jurisdiction no such thing as property in a horse; whatever is property by statute, may be deprived of that character by statute; and whatever by the common law, or by the understanding and consent of mankind, is regarded as property, may cease to be such in any country, if the law-making power thereof shall so determine. Of the truth of this proposition there can be no doubt; it is acted upon every year in the States and in all sovereignties. The States are sovereign, except in so far as their power is limited by the Constitution of the United States. It is not claimed that the power of the States to declare what shall or shall not be treated as property within their own limits has been taken from them, always excepting the one case of slaves. One State has provided by legislation that there shall be no property in cart-wheels of less than a certain width; another, that there shall be no such thing as property within its jurisdiction in game cocks; another, that an inferior and vicious species of cattle, which were being brought into it from a neighboring country shall not be introduced, held, or kept as property, within its limits; another, that there shall be no protection to, and no property in, domestic liquors, and when the question of the power of the State to pass such a law was raised and presented to the Supreme Court of the United States, that tribunal decided in favor of the power. Thus, in all cases and in reference to all kinds of property, except slave property, the States and Territories have unlimited power; and if they may deny the fact of property in any particular article or thing, they may of course regulate its use and enjoyment.

The truth is, this question of property belongs exclusively to the local sovereignties, and the Constitution of the United States does not in any manner recognise slaves as property. In this country, where the Federal Constitution is silent upon the subject of what is or is not property, the only limitation upon State authority is what possibly may result from the operation of a constitutional law of Congress; as, in the case of a revenue law, the effect may be to recognise property in any article of merchandise imported into the country upon which imposts are levied and paid, which article, thus recognised as property by a law paramount to any State authority, must be respected and treated as such within the States; and if this be true, it illustrates the position, that whatever is property under a recognition superior to State authority enjoys a special protection. If imported liquors are entitled to such protection by operation of a constitutional law of Congress, *a fortiori* is slave property, by virtue of the Constitution itself.

The power of the Territories over property is derived from their organic acts, and is generally, if not always, (with the exception of

slavery prohibitions,) unrestricted by such acts, so that the authority of Territorial Legislatures in respect to property is similar to that of State Legislatures; and the celebrated axiom of Mr. Clay, that "that is property which the law makes property," is true in the States and Territories alike; that is, true in respect to all things which are the rightful subjects of property—which are susceptible of being made property by any human law. Hence it comes that each State and Territory decides for itself what shall be known and respected as property within its jurisdiction. Whatever the law of Massachusetts makes property is property in that State, and whatever the law of Nebraska makes property is property in Nebraska; and nothing is or can be property in either, in violation of the local law, and nothing can be property in any State or Territory because it is property anywhere or everywhere else. The law of Maine must govern in that State, and not the law of North Carolina; the law of Nebraska must govern in Nebraska, and not the law of Alabama. There is no hardship or inequality in all this; the same law applies to all, residents and non-residents. The citizen of New York who removes to Nebraska with his property, does not hold it in Nebraska because it was property in New York, but simply because he finds it to be property in Nebraska by her own law. His title there does not necessarily rest upon the fact that it is property by the general consent of the civilized world, for, notwithstanding that general recognition, it may lose its character of property in Nebraska by the force of her local legislation.

But the States and Territories can pass no unequal laws, and deprive one description of persons or citizens of rights enjoyed by others; they cannot enact that a horse may be property in the hands of one man, and not in those of another; they may impose no unequal taxes, or make unjust discriminations between residents and non-residents, natives and foreigners, citizens of one State and citizens of another State—in this sense, one cannot be deprived of his property without due process of law — but whenever, in the judgment of the law-making authority, the good and welfare of the people and the advancement of the State will be promoted by a general law, operating upon all alike, which shall remove from any article, before held as property, that character or relation, it may do so; otherwise, it is not sovereign.

From this examination of the Dred Scott decision, we perceive the startling character and far-reaching consequences of the new claims of the oligarchy. We find that this Constitution of our fathers, in which Madison would not allow the idea of slavery to be seen at all, and which was accepted as a great charter of human rights, under which it was hoped the people of the United States might be able to rid themselves of this acknowledged evil, carries slavery, of its own force, into every State as well as every Territory of the United States, and plants it there so deeply and firmly that no power remains adequate to its expulsion. The States may prohibit or discourage everything else; but slavery is of so much greater utility and necessity than any other property, that it has been clothed upon with sanctity by the Constitution itself, and is inviolable. The expedient of unfriendly legislation, it has been seen, is not admissible, for the subject to which it is to be applied cannot be affected by it; the property in this case is not, like ordinary property, within the control of State legislation, but it is property that has been raised by the Constitution of the United States to a position where it is unassailable. Any local law impairing a right which rests upon a special constitutional sanction must be declared inoperative, of course. Property founded upon such a right cannot be subjected to any laws or regulations more onerous than are made to apply to other property, or perhaps than attach to the most favored descriptions of property; certainly, any invidious legislation, and all regulations discriminating against it, would be unconstitutional. The laws protecting other property would protect this; actions of case, trespass, replevin—in fine, all the appropriate remedies for injuries to property—would lie as well for torts to this property as to any other. To maim a slave would be trespass, to steal him would be larceny. So, an affirmative code for the protection of slave property would in almost every conceivable case be unnecessary, and unfriendly legislation would in all cases be nugatory. What cannot be done directly cannot be done indirectly. I say this, it will be understood, upon the assumption that the Dred Scott decision is right, and is to be carried out in all its implications by the Federal courts, as it undoubtedly will be, so long as the Democratic party continues in power.

Mr. Chairman, if the Dred Scott decision is good law, and it shall be acquiesced in as such, the question of freedom or slavery in this country is irrevocably settled; the Constitution which the builders constructed is already overthrown, and the Union for liberty and republicanism, which rested thereon, exists no longer, and the foundations of a Union for a grinding servitude on the one side, and an arrogant oligarchy on the other, to be erected upon its ruins, have been commenced.

I have dwelt at length upon this branch of my subject, because I perceive that this decision embraces and involves *every question* in respect to the existence, extension, and perpetuation of slavery. It is the essential platform of the Democratic party; it covers every claim that the oligarchy sets up; it forbids the prohibition of slavery extension; it declares, in effect, that the Constitution, *ex proprio vigore*, carries slavery into every Territory and every State of the Union, and extends to slave prop-

erty a degree of favor and protection such as is accorded to no other kind of property; it vindicates the slave trade, and demands, by an imperious logic, its reopening and legalization; for, if it is true that negroes have "no rights which white men are bound to respect," if their normal and rightful *status*—I hardly know what word to use when I speak of a man as a thing—is that of property, and if this is so plain that the Supreme Court is bound to say that it is true, although the Constitution makes no reference to them as such, with what propriety can the importation of them be made piracy? What good reason can be given for such a restriction as is contained in the laws against the slave trade, upon what is in itself a legitimate subject of commerce? Why make it criminal to import slaves, when property in them already within the United States is more highly favored by the Constitution than property in any other form?

I come now to inquire in regard to the basis or foundation of this extraordinary decision; to ascertain and examine the grounds upon which it rests, and I discover that they are as follows:

I. That whereas, by the opinions of the civilized world before and at the time of the formation of the Constitution, negroes of African descent were an inferior race, fit only to be slaves, and intended by their Creator to occupy that place or status in the world, it could not have been understood that they were to be citizens of the United States. They were regarded as the subjects of property, and not as persons entitled to the rights and franchises of citizenship.

II. The doctrine of Mr. Calhoun and his disciples, that slavery is not only right and fit, so far as the slave is concerned, but a blessing to free men, a necessary relation in society, and the very corner stone of true and legitimate government.

III. The provisions in the Constitution in reference to the slave trade and the return of fugitives from service or labor.

Under some or all of these heads may be found the reasons which brought the judges, who united in the opinion of the court, to make the Dred Scott decision. And I will here observe, that although in giving in their opinions they differed from each other in many respects, and so far that it may be disputed whether a majority were agreed upon any particular line of reasoning, it can hardly be doubted that what is called the "opinion of the court," pronounced by Chief Justice Taney, embodies in its results the opinions of the majority of the court. This is the understanding of the President, of the South, and of the Democratic party, as is seen by their declarations and platforms.

I. The African race, we are assured by a majority of the court, had for more than a century before the formation of the Constitution, "been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position of society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion." * * * They "were never thought of or spoken of except as property, and when the claims of the owner or the profits of the trader were supposed to need protection."

Mr. Chairman, it is undoubtedly true that for many years preceding the adoption of the Constitution, members of the African race had been held in slavery on this continent; but how and why and by whom this practice was commenced and continued, appears in the quotations which I made at the commencement of these remarks. They were held in that condition, and had been reduced to it, wrongfully and with a strong hand—because they were weak, and not because it was right or just—by the force of superior power, as millions of the white race had for many centuries been held in slavery upon the continent of Europe. They were held as slaves at the formation of the Constitution, because they had been brought here and forced upon our people while they were yet the colonies of Great Britain. After their independence, they could not be enfranchised at once; they could not be placed in possession of political power in a day or a year. But, sir, if there is anything true in the history of those times, the men of the Revolution did not approve or justify the system. They felt it to be wrong, cruelly, strangely wrong; they regarded their relations to these unfortunate beings as false and unnatural, and it was their earnest desire and full determination to change them, as in general terms I have already shown, and as I will more fully prove hereafter. That they or their ancestors regarded the Africans as unfit for "*political relations*"—I mean Africans, as such, and not slaves—is disproved by the fact stated by Judge Curtis in his opinion, and supported by the authorities to which he referred, that prior to this time "all free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and *North Carolina*, though descended from *African slaves*, were not only *citizens* of those States, but such of them as had the other necessary qualifications possessed the franchise of electors on equal terms with other citizens."

That the Africans at the time referred to were "*regarded as so far inferior that they had* NO RIGHTS WHICH WHITE MEN WERE BOUND TO RESPECT, *and that the negro might* JUSTLY *and lawfully be reduced to slavery for his benefit.*" That "*this opinion was at that time fixed and* UNIVERSAL *in the civilized portions of the white race;*" that "*it was regarded as an axiom in morals as well as in politics, which* NO ONE *thought of disputing, or supposed to*

be OPEN *to dispute;*" that "men in every grade and position in society" never doubted "*for a moment the correctness of this opinion*"—are asseverations so strange and monstrous, so plainly, greatly, shockingly untrue, that one hardly knows how to meet them—he is staggered and confounded by their grossness and audacity.

But these inventions were necessary, to lay a foundation for the Dred Scott decision, and indeed form its chief corner stone. How totally unsupported they are by the history of those times, I shall show by testimony the most direct and overwhelming, and of which one would suppose Chief Justice Taney could not have been ignorant. That, at the time of the adoption of the Constitution, the opinion in regard to negroes (which the Chief Justice says "was fixed and universal in the civilized portions of the white race") was not as he has stated it, but, on the other hand, that it was considered that the black man *had* "rights which white men were bound to respect;" and that he might *not* "justly be reduced to slavery for the white man's benefit;" that it was *not* an axiom in *morals* that he might *justly* be made a slave; that his true and proper condition was *not* that of a slave, and therefore of property, but that of a human, sentient, responsible, immortal being, possessing the same natural rights with other men, appears from the proceedings of numerous public bodies, the writings and speeches of eminent men, representatives of various interests and classes, of statesmen, politicians, lawyers, philosophers, poets, divines, in this country and in Europe, whose opinions, with the members of the Convention which framed the Constitution, were of the highest authority, and some of whom, indeed, were themselves members of that body. From this mass of testimony I will make such selections as my time will permit.

In the year 1785, three years before the adoption of the Federal Constitution, a bill for the *abolition of slavery* was passed by the Legislature of New York, to which Chancellor Livingston, *clarum et venerabile nomen*, the magistrate who administered to George Washington his first oath of office as President of the United States, objected, not that it abolished slavery, but *but that it did not go further, and clothe the negro with all the rights and privileges of white men.* To his objections I beg to call your particular attention; they were as follows:

"1. Because the last clause of the bill enacts that no negro, mulatto, or mustee, shall have a legal vote in any case whatsoever; which implicatively excludes persons of this description from all share in the Legislature, and those offices in which a vote may be necessary, as well as from the important privilege of electing those by whom they are to be governed; the bill having, in other instances, placed the children that shall be born of slaves in the rank of citizens, agreeable both to the spirit and letter of the Constitution, they are, as such, entitled to all the privileges of citizens; nor can they be deprived of these essential rights without shocking those principles of equal liberty which every page in that Constitution labors to enforce.

"2. Because it holds up a doctrine which is repugnant to the principles on which the United States justify their separation from Great Britain, and either enacts what is wrong or supposes that those may rightfully be charged with the burdens of Government who have no representative share in imposing them:

"3. Because this class of disfranchised and discontented citizens, who at some future period may be both numerous and wealthy, may, under the direction of ambitious or factious leaders, become dangerous to the State, and effect the ruin of a Constitution whose benefits they are not permitted to enjoy.

"4. Because the creation of an order of citizens who are to have no legislative or representative share in the Government, necessarily *lays the foundation of an aristocracy of the most dangerous and malignant kind, rendering power permanent and hereditary in the hands of those persons who deduce their origin through white* ancestors only; though these, at some future period, should not amount to a fiftieth part of the people. That this is not a chimerical supposition will be apparent to those who reflect that the term *mustee* is indefinite; that the desire of power will induce those who possess it to exclude competitors by extending it as far as possible; that, supposing it to extend to the seventeenth generation, every man will have the blood of many more than two hundred thousand ancestors running in his veins, and that, if any of these should have been colored, his posterity will, by the operation of this law, be disfranchised; so that, if only one-thousandth part of the black inhabitants now in the State should intermarry with the white, their posterity will amount to so many millions that it will be difficult to suppose a fiftieth part of the people born within this State two hundred years hence, who may be entitled to share in the benefits which our excellent Constitution intended to secure to every free inhabitant of the State.

"5. Because the last clause of the bill, being general, deprives those black, mulatto, and mustee citizens, *who have heretofore been entitled to a vote*, of this essential privilege, and under the idea of political expediency, without their having been charged with any offence, disfranchises them, in direct violation of the established rules of justice, against the letter and spirit of the Constitution, and tends to support a doctrine which is inconsistent with the most obvious principles of government, that the Legislature may arbitrarily dispose of the dearest rights of their constituents."

Have I made no mistake? Is it true, is it possible, that in the face of this noble protest, which more than covers all the positions of the Republican party, Judge Taney could have used the language I have quoted? Can it be, that in drawing an elaborate opinion in a great case, the most important in its bearing and issues ever pronounced by an earthly court, and in which historical accuracy was of the first necessity, he could have ignored the record I have cited, and the facts which it proves, and have solemnly declared, that in 1788, when the Constitution was formed, and for more than a century before, the black race were regarded as "altogether unfit to associate with the white race, either in social or political relations," and might "justly and lawfully be reduced to slavery for their benefit," and that this opinion was "*fixed and universal* in the civilized portion of the white race?"

The Legislature of Pennsylvania, in 1780, passed an act abolishing slavery in that State, which was introduced by the following preamble, the authorship of which I have heard—I know not with what authority—ascribed to Dr. Franklin:

"When we contemplate our abhorrence of that condition to which the arms and tyranny of Great Britain were exerted to reduce us; when we look back upon the variety of dangers to which we have been exposed, and how miraculously our wants in many instances have been supplied, and our deliverances wrought, when even hope and human fortitude have become unequal to the conflict, we are unavoidably led to a serious and grateful sense of the manifold blessings which we have undeservedly received from the hand of that Being from whom every good and perfect gift cometh. Impressed

with these ideas, we conceive that it is our duty, and we rejoice that it is in our power, to extend a portion of that freedom to others which hath been extended to us, and release from that state of thraldom, to which we ourselves were tyrannically doomed, and from which we have now every prospect of being delivered. It is not for us to inquire why, in the creation of mankind, the inhabitants of the several parts of the earth were distinguished by a difference in feature or complexion.

"It is sufficient to know that all are the work of an Almighty hand. We find, in the distribution of the human species, that the most fertile as well as the most barren parts of the earth are inhabited by men of a complexion different from ours, and from each other; from whence we may reasonably as well as religiously infer, that He who placed them in their various situations hath extended equally His care and protection to all; and it becometh not us to counteract His mercies. We esteem it a peculiar blessing granted to us, that we are enabled this day to add one more step toward universal civilization by removing, as much as possible, the sorrows of those who have lived in undeserved bondage, and by which, from the assumed authority of the Kings of Great Britain, no effectual legal relief could be obtained. Weaned by a long course of experience from those narrow prejudices and partialities we had imbibed, we find our hearts enlarged with kindness and benevolence towards men of all conditions and nations; and we conceive ourselves, at this particular period, extraordinarily called upon, by the blessings which we have received, to manifest the sincerity of our profession, and to give a substantial proof of our own gratitude.

"And whereas the condition of those persons who have heretofore been denominated negro and mulatto slaves has been attended with circumstances which not only deprived them of the common blessings which by nature they were entitled to, but has cast them into the deepest afflictions, by an unnatural separation and sale of husband and wife from each other, and from their children—an injury the greatness of which can only be conceived by supposing that we were in the same unhappy case; in *justice*, therefore, to persons so unhappily circumstanced, and who have no prospect before them whereon they may rest their sorrows and their hopes—have no reasonable inducement to *render their service to society which they otherwise might*; and also in grateful commemoration of our own happy deliverance from that state of unconditional submission to which we were doomed by the tyranny of Britain: Therefore, *Be it enacted*," *&c.*

Sir, this splendid preamble, and the act which it introduced, were no trifling or obscure matters. They were the production of great men, acting on a most conspicuous theatre, and their work is one of historical interest and grandeur. It was to this preamble that Mr. Webster referred, at Philadelphia, in 1844, in these words:

"That preamble was the work of your fathers! They sleep in honored graves! There is not, I believe, one man living now who was engaged in that most righteous act. There are words in that preamble fit to be read by all who inherit the blood, by all who bear the name, by all who cherish the memory of an honored and virtuous ancestry. And I ask every one of you now present, ere eight-and-forty hours pass over your heads, to turn to that act, to read that preamble; and if you are Pennsylvanians, the blood will stir and prompt you to do your duty. There are arguments in that preamble far surpassing anything that my poor ability could advance, and there I leave the subject."

Oh, sir, that the Pennsylvanians would now read that preamble! The blood would stir, and they would be prompted to their duty by taking that commanding position in the army of freedom to which they are called by the just renown and the glorious memories of their ancestors, whose utterances in behalf of liberty and human rights were among the most eloquent and fervid that have ever been heard upon this continent.

But, Mr. Chairman, where has Judge Taney been, that, notwithstanding this action of the Pennsylvania Legislature eight years before the Constitution was adopted, he should have the boldness to say that, by the common consent of mankind, at the time this act was passed, negroes "had no rights which white men were bound to respect," and might justly and lawfully be reduced to slavery for his benefit; and that this was an axiom in morals as well as politics which *no one* thought of disputing, and upon which men of every grade and position in society daily and habitually acted?

Sir, is it not manifest and certain that the men of the Revolution, the framers of our institutions, acted in the light and spirit of these testimonies, rather than in that thick darkness of inhumanity and practical atheism in which the Chief Justice has been groping?

In 1773, Dr. Benjamin Rush, of Philadelphia, who to the reputation of an eminent physician added that of a distinguished philanthropist and statesman, issued an address to the inhabitants of America on slave-keeping, in which he said:

"Liberty and property form the basis of abundance and good agriculture. I never observed it to flourish where those rights of mankind were not firmly established. The earth, which multiplies her productions with a kind of profusion under the hands of the free-born laborer, seems to shrink into barrenness under the sweat of the slave. Such is the will of the Great Author of our nature, who has created man free, and assigned to him the earth, that he might cultivate his possession with the sweat of his brow, but still should enjoy his liberty."

Warming with his subject, and passing from the material to the moral and religious aspect of it, he exclaims:

"Ye men of sense and virtue, ye advocates for American liberty, rouse up, and espouse the cause of humanity and general liberty. Bear a testimony against a vice which degrades human nature, and dissolves that universal tie of benevolence which should connect all the children of men together in one great family. *The plant of liberty is of so tender a nature, that it cannot thrive long in the neighborhood of slavery.* Remember, the eyes of all Europe are fixed upon you, to preserve an asylum for freedom in this country, after the last pillars of it are fallen in every other quarter of the globe.

"But chiefly, ye ministers of the gospel, whose dominion over the principles and actions of men is so universally acknowledged and felt, ye who estimate the worth of your fellow creatures by their immortality, and therefore must look upon all mankind as equals, *let your zeal keep pace with your opportunities to put a stop to slavery.* While you enforce the duties of 'tithe and cummin,' neglect not the weightier laws of justice and humanity. Slavery is a hydra sin, and includes in it every violation of the precepts of the law and the gospel. *In vain will you command your flocks to offer up the incense of faith and charity, while they continue to mingle the sweat and blood of negro slaves with their sacrifices.*"

To our conscientious and devoted clergymen, who, for following too closely the precepts and injunctions of their Divine Master, have been showered with torrents of abuse by demagogues and blackguards, these earnest words of a true patriot and a sincere Christian, bear healing in their wings.

Dr. Franklin, in 1790, but two years subsequent to the adoption of the Constitution, in the name and behalf of "The Pennsylvania Society for Promoting the Abolition of Slavery," prepared a memorial to the Congress of the United States, in which he used the following language:

"From a persuasion that equal liberty was originally the portion and is still the birthright of all men, and influenced by the strong ties of humanity and the principles of their in-

situation, your memorialists conceive themselves bound to use all justifiable endeavors to loosen the bonds of slavery, and promote a general enjoyment of the blessings of freedom. Under these impressions, they earnestly entreat your attention to the subject of slavery; that you will be pleased to countenance the restoration to liberty of those unhappy men, who, alone in this land of freedom, are degraded into perpetual bondage, and who, amid the general joy of surrounding freemen, are groaning in servile subjection; that you will devise means for removing this inconsistency of character from the American people; that you will promote mercy and *justice*."

[Judge Taney says everybody believed that slavery was justice]

"towards this distressed race; and that you will step to the very verge of the power vested in you for discouraging every species of traffic in the persons of our fellow-men."

It is not a little strange that Dr. Franklin and his associates should have been so ignorant of the Constitution, and what it was made for, and of the sentiment of the times, as not to have known that it was intended to recognise and perpetuate human slavery, and that, in point of fact, it regarded slaves as property, and incapable of being made citizens by any power in the country. Instead of knowing the facts now asserted by Judge Taney as the basis of a judicial decision, they even supposed (so friendly, in their view, was that instrument to liberty) that Congress might in some way "countenance" the abolition of slavery.

That Virginia was in no wise behind Pennsylvania in her desire for the abolition of slavery, in her sense of its injustice, and in her advocacy of the rights of human nature, is of common knowledge, derived from the citations so often made from the writings of Washington, Jefferson, Madison, Patrick Henry, Tucker, Wythe—indeed, of all her great names of the Revolutionary period. I need not quote them. But I will read a brief extract, not so well known, from an address published in the *Virginia Gazette* in 1767:

"Now, as freedom is unquestionably the birthright of all mankind, Africans as well as Europeans, to keep the former in a state of slavery is a constant violation of that right, and therefore of justice."

And yet the opinion was "universal," that Africans had no rights!

But, sir, to remove all foundation for the argument raised by Chief Justice Taney, and to prove affirmatively and beyond doubt that the framers of the Constitution could not have been influenced by such opinions and purposes as he has ascribed to them, I refer to an act of the Virginia Legislature in 1783, (Hening's Statutes, vol. ii, page 332,)—for a knowledge of which I am indebted to the able and very admirable oration of Mr. George Sumner, delivered before the authorities of Boston on the 4th of July, 1859—which repeals the law of 1779, limiting citizenship to whites, and enacts—

"That all *free* persons, born within the territory of this Commonwealth, shall be deemed *citizens* of this Commonwealth."

Had the Chief Justice never heard that in his native State of Maryland there were very decided opinions in regard to the wrongfulness and inexpediency of slavery, at and before the formation of the Constitution? Can he believe that the people of that State understood that they had, so far as their own vote was concerned, adopted a fundamental law for the Union, which stamped the African with an incapacity to become a citizen, that looked upon him as a proper and rightful subject of merchandise? Under what hallucination was he suffering, that he could assert that it was in Maryland, as well as in the other States, an axiom in morals and politics, that the negro might be justly reduced to slavery, when he must have known that, the very next year after the adoption of the Constitution, an abolition society was organized in that State, the result of the discussions, which for years had taken place in her Legislature, and of such opinions as had been expressed by Pinkney, Martin, and others of her influential and distinguished citizens? Mr Pinkney had warned them "that slavery would work a decay of the spirit of liberty in the free States," and that, "by the eternal principles of natural justice, no master in the State has a right to hold his slave in bondage a single hour."

Luther Martin said, in 1787:

"Slavery is inconsistent with the genius of republicanism, and has a tendency to destroy those principles on which it is supported, as it lessens the sense of the equal rights of mankind, and habituates us to tyranny and oppression."

But it would be an endless task to reproduce even a tithe of the evidence that might be relied upon to sustain the assertion that Judge Taney has wholly misunderstood or misrepresented the opinions and sentiments which were influential and controlling with the members of the Constitutional Convention. Massachusetts had already abolished slavery; the testimony of her great men, the Adams's and others, was against the giant iniquity. It had no defenders in all New England. Indeed, I hazard nothing in saying that the opinion was general, and all but universal, from the St. Croix to the St. Mary, against the postulates of the Chief Justice.

Inasmuch as some reliance has been placed by the court upon what is assumed to have been the public opinion of Europe upon this question of slavery, it will not be out of place to give a few extracts from the writings of some of her greatest minds.

Lord Mansfield, in 1777, in an opinion which declared the law of England, said:

"The state of slavery is of such a nature that it is incapable of being introduced on any reasons, moral or political, but only by positive law, which preserves its force long after the reasons, occasion, and time itself, whence it was created, are erased from the memory. It is so odious, that nothing can support it but positive law. Whatever inconveniences therefore may follow from the decision, I cannot say this case (Somerset's) is allowed or approved by the law of England, and therefore the black must be discharged."

John Locke wrote:

"Slavery is so vile, so miserable a state of man, and so directly opposite to the generous temper and courage of our nation, that it is hard to be conceived that an Englishman, much less a gentleman, should plead for it."

Charles James Fox, the early and true friend

of America, the large-hearted and the wise, said:

"With regard to a regulation of slavery, my detestation of its existence induces me to know no such a thing as a regulation of robbery and a restriction of murder. Personal freedom is a right, of which he who deprives his fellow-creature is criminal in so depriving; and he who withholds is no less criminal in withholding."

Edmund Burke declared—

"That slavery is a state so improper, so degrading, and so ruinous to the feelings and capacities of human nature, that it ought not to be suffered to exist."

Montesquieu, among Frenchmen, wrote:

"It is impossible for us to suppose these creatures to be men; because, allowing them to be men, a suspicion would follow that we ourselves are not Christians."

Again:

"In Democracies, where they are all upon an equality, slavery is contrary to the principles of the Constitution."

Lafayette said:

"I would never have drawn my sword in the cause of America, if I could have conceived that thereby I was founding a land of slavery."

But enough, and more than enough, of these authorities. I submit that they overthrow, beyond controversy, the historical statements and propositions of the Chief Justice.

II. While the propositions which I have been considering are undoubtedly those upon which the decision was intended to rest, it is manifest that they harmonize with, and derive aid from, the political philosophy of Mr. Calhoun, Mr. McDuffie, and others of that school, which teaches that Governments founded on the idea of universal liberty are radically false, and necessarily insecure; that a pure Democracy, or a Republic resting upon universal suffrage, must be practical impossibilities, and that the only true and stable Government is that which recognises and provides for the existence of classes among the people over whom it extends. The theory is, that Governments can securely rest only on the intelligence and virtue of those who govern, and that it is idle to expect that the requisite intelligence for the wise exercise of the power of selecting rulers and making laws can be found among the classes who perform the physical labor of a country; that such as, from their position and circumstances in life, are obliged to labor daily in the field or shop, or elsewhere, cannot find time to inform themselves in respect to the facts necessary to be known for the formation of correct opinions upon questions of administration and policy; that they can have no leisure for political inquiries, and for the acquisition of the general knowledge indispensable to a wise and judicious use of the elective franchise. Only those, we are told, who are relieved from this necessity of daily labor, by the labor of subordinate and inferior classes, can properly understand the science of government and the wants of a nation, and be able to know the persons who are wise and virtuous enough to be intrusted with the duties of administration. "Those who think must govern those who work," says this philosophy; and if it says truly, Mr. Calhoun's proposition, "*that slavery is the corner-stone of all true Governments*," is a sound one; and it results that if slavery be not the corner-stone of this Government, the Government has no good and safe foundation. If these positions are well taken, the proper and normal condition of *some* men is that of slaves and of property. And, inasmuch as the framers of the Constitution were wise men, and understood this, and in all respects knew what they were about, it cannot be doubted that in the fundamental law which they made they recognised the existence of such a class, not only as a fact, but as a necessity; not merely as an accident, but as an essential condition of the new society; and although they speak of guarantying to the States a republican form of government, that was understood to refer to Governments not monarchical, and not to exclude those in which, as in the Roman, Venitian, and other republics which have existed in Europe, at different periods for many centuries, the people were divided into castes and classes. So, when an organic law was framed, there can be no doubt—such is the argument—that its authors regarded the degraded Africans as belonging to a disabled and servile class, being all laborers, and stamped upon them an incapacity to be citizens, and treated them as the rightful subjects of property.

Undoubtedly, if the doctrine of the Calhoun Democracy be sound, a very strong argument may be adduced in favor of the Dred Scott decision. According to this theory, slavery is of Divine authority, and exists by natural law. It is, as we were told by the framers of the Lecompton Constitution, "before and higher than all constitutional sanctions." God made one class or description of men, or certain classes and descriptions of men, for slaves, and the Government which does not perceive and act upon this essential truth is false and impious.

That the followers of Mr. Calhoun—and they are now the ruling spirits in the Democratic party—are fully committed to these doctrines, and are preparing to accept their logical results, is seen in the fact that they are beginning to maintain that wherever a servile and laboring class of black men cannot be found in a community, their place must be supplied with white men.

Mr. George Fitzhugh, of Richmond, Virginia, a political writer of large reputation in the South, published, in 1854, a work entitled "*Sociology for the South; or, the Failure of Free Society*," in which he said:

"Slavery protects the weaker members of society, just as do the relations of parents, guardian, and husband, and is as necessary, as natural, and almost as universal, as those relations."

"Ten years ago, we became satisfied that slavery, BLACK OR WHITE, was right and necessary. We advocated this doctrine in very many essays."

The Richmond *Inquirer* says:

"While it is far more obvious that negroes should be slaves than whites—for they are only fit to labor, and not to direct—*yet the principle of slavery is itself right, and does not depend on difference of complexion.*"

In another article is the following:

"*Freedom is not possible without slavery.* Every civil polity and every social system implies gradation of rank and condition. *In the States of the South, an aristocracy of white men is based on negro slavery;* AND THE ABSENCE OF NEGRO SLAVERY WOULD BE SUPPLIED BY WHITE MEN."

It was to an assumed degradation of white labor that Mr. Mason, of Virginia, undoubtedly referred the other day, in the Senate of the United States, when he spoke of the free States as *servile* States. Governor Hammond, of South Carolina, a few years ago, referred to free labor in terms of similar import, when he denominated our free white laborers the "mud sills of society."

III. The court, in the opinion read by the Chief Justice, rely in some measure upon two clauses in the Constitution, which, they say, "point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed." The best way to negative this statement is to read the clauses referred to; they are as follows:

"The migration or importation of such *persons* as any of the States *now existing* shall think proper to *admit*, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."

"No *person* held to service or labor in one State, *under the laws thereof*, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

In order to maintain that the "persons" spoken of in these clauses were incapable of being citizens, that they were recognised as property, or as the fit subjects of property, it must be shown that these results are deducible from other parts of the Constitution, (which is not pretended,) or from the universally known and admitted fact that negroes were an inferior race, without rights, whose normal *status* was that of slaves, and whose true description was that of property. Because it will be seen at once, that if these "persons" had rights "which white men were bound to respect," if they were capable of enjoying social or political relations with others, if they could by any possibility be entitled to be regarded and respected as men, or as anything except slaves and property, the interpretation of the court could not be sustained. The words used do not imply that negroes were necessarily slaves—they might be used in respect to those who could be free men and citizens. How are we to ascertain whether the "persons" referred to were incapable of being citizens, and capable only of being chattels? Plainly, by showing that negroes were meant by the word "persons," wherever used in these clauses, and further that by the universal opinion of the times, or by the fitness and necessity of the thing itself, or by both, they were of a race that could not be citizens, and who ought to be, and of right were, chattels. So these clauses do not relieve the court, as they fully understood they did not, from the necessity of going beyond them to ascertain the true effect and meaning of the Constitution. But it will be observed that the Constitution speaks always of "persons," and never of slaves or property. And when it speaks of "persons" as "held to service," it does not recognise their service as being in virtue of any of its own provisions, but as *under the laws of the States*. It excludes, carefully and industriously, the idea or the implication, that slaves are, or can be, property under the Constitution.

In respect to the clause relating to the slave trade, I will observe, in addition to what has already been said, that if the framers of the Constitution believed slavery to be right and just, and that negroes were of a race so inferior and of a nature so low that they could not be the subjects of citizenship, and were the legitimate subjects of commerce, it is difficult to see why they were so anxious to engraft upon it a clause enabling Congress to embarrass and cripple the practice or system—why they should provide for damaging if not for destroying a system which they ALL—"the opinion was fixed and universal," you know—agreed was wise, just, benevolent, and expedient?

But one thing more remains to me in connection with this case—if, indeed, it be not a work of supererogation—and that is, to show that the Democratic party, as it calls itself, accepts and affirms this decision in all its parts, with all its doctrines, implications, and results.

The President of the United States, in his well-known Connecticut letter, dated August 15, 1857, writes:

"Slavery existed at that period, and still exists, in Kansas, under the Constitution of the United States. This point has at last been finally decided by the highest tribunal known to our laws."

He also says, in one of his messages, that—

"Neither Congress, nor a Territorial Legislature, nor any human power, has any authority to annul or impair this vested right."

Charles O'Conor, a distinguished Democratic lawyer of the city of New York, in a speech at a great Union meeting held at the Academy of Music, in that city, on the 19th of December last, said:

"Gentlemen, the Constitution guaranties to the people of the Southern States protection to their slave property. In that respect, it is a solemn compact between the North and the South."

In a subsequent part of his speech, he affirmed the propositions which I have shown are the basis and groundwork of the Dred Scott decision:

"I insist," said Mr. O'Conor, "that negro slavery is not unjust. * * * I maintain that negro slavery is not unjust; that it is benign in its influences upon the white man, and upon the black man; that it is ordained by nature; that it is an institution created by nature itself."

Nothing can be clearer upon this point than what I shall read from a speech delivered by Mr. BRECKINRIDGE, the Vice President of the United States, at Frankfort, Kentucky, in December last:

"Gentlemen, I bow to the decision of the Supreme Court of the United States upon every question within its proper jurisdiction, whether it corresponds with my private opinion or not; only, I bow a trifle lower when it happens to do so, as the decision in the Dred Scott case does. I approve it in all its parts as a sound exposition of the law and constitutional rights of the States, and citizens that inhabit them. It may not be improper for me here to add, that so great an interest did I take in that decision, and in its principles being sustained and understood in the Commonwealth of Kentucky, that I took the trouble, at my own cost, to print or have printed a large edition of that decision, to scatter it over the State, and, unless the mails have miscarried, there is scarcely a member elected to the Legislature who has not received a copy with my frank.

"To approve the decision of the Supreme Court in the Dred Scott case would seem to settle the whole question of Territorial sovereignty, as I think will presently appear. * * *

"I repose upon the decision of the Supreme Court of the United States, as to the point that neither Congress nor the Territorial Legislature has the right to obstruct or confiscate the property of any citizen, slaves included, pending the Territorial condition. * * *

"So that, in regard to slave property, as in regard to any other property recognised and guarded by the Constitution, it is the duty, according to the Supreme Court, of all the courts of the country to protect and guard it by their decision, whenever the question is brought before them. To which I will only add this, that the judicial decisions in our favor must be maintained—these judicial decisions in our favor must be sustained.

"If present remedies are adequate to sustain these decisions, I would have nothing more done. I, with many other public men in the country, believe they are able. If they are not, if they cannot be enforced for want of the proper legislation to enforce them, sufficient legislation must be passed, or our Government is a failure. Gentlemen, I see no escape from that conclusion."

And, Mr. Chairman, there is not a particle of difference in principle between Mr. BRECKINRIDGE and Mr. DOUGLAS; and all there is in appearance, is that, while the latter accepts the principles and dogmas of the court, in the most explicit terms, the former states also their logical results and requirements.

Let us see how this is. In a speech at New Orleans, on the 6th of December, 1858, Mr. DOUGLAS said:

"The Democracy of Illinois, in the first place, accepts the decision of the Supreme Court of the United States in the case of Dred Scott, as an AUTHORITATIVE *interpretation of the Constitution.*"

He is willing to surrender all power to interpret the Constitution, so far as he is able, in favor of the Supreme Court.

"In accordance with that decision," he goes on to say, "we hold that SLAVES ARE PROPERTY, and hence on an equality with all other kinds of property; and the owner of a slave has the same right to move into a Territory, and carry his slave property with him, as the owner of any other property has to go there and carry his property."

I submit that this covers the whole ground occupied by Mr. Breckinridge and President Buchanan. How, if slaves are property under an "authoritative interpretation of the Constitution," that property can be exposed to unfriendly legislation, in a Territory subject to the Constitution, Mr. DOUGLAS has not shown, and cannot. It is simply absurd to say that it can be. And so Mr. DOUGLAS himself understands; for in the same speech he continues:

"And let me say to you, that if you oppose this your doctrine, if you attempt to exempt slavery from the rules which apply to other property, you will abandon your *strongest grounds of defence against the assaults of the Black Republicans and abolitionists.*"

Certainly Mr. DOUGLAS saw that the idea of property in slaves, under the Federal Constitution, was the *strongest* ground of defence that the slaveholders can have. And although he speaks of the applicability of the same rules to slave as to other property, he cannot be ignorant that anything which is property by virtue, and with the stamp, of the Constitution, must be unexposed to attacks which may be made on property not thus fortified.

But, not willing to stop here, the Senator from Illinois proceeded to endorse the reasons upon which the decision is placed by the court, by denying the natural and clear import of the Declaration of Independence, and complaining of Southern men—this Northern Senator complained of Southern slaveholders!—for not meeting as they should the Northern argument drawn from that instrument. Said he:

"I must be permitted to tell you, that many *men of your Southern men have* QUAILED *under that argument, and failed to meet it.*"

They have *quailed* before the great utterances of the Declaration, and have been unable to deny them—he, never. He can deny the immortal truths of that instrument without quailing!

That these extracts contain his deliberate opinions and his real position on this question, appears from some remarks which he made in the Senate of the United States on the 23d day of February, 1859:

"I do not put slavery on a different footing from other property. I recognise it as property under what is *understood to be the decision of the Supreme Court.* I agree that the owner of slaves has the same right to remove to the Territories, and carry his slave property with him, as the owner of any other species of property; and to hold the same subject to such local laws as the Territorial Legislature may CONSTITUTIONALLY PASS; and if any person shall feel aggrieved by such local legislation, he may *appeal to the Supreme Court to test the validity of such laws.*"

There you have it—subject to such legislation as the Territorial Legislatures may *constitutionally pass!* And at that very time he knew that this court, in the decision which he says he accepts, had declared that a Territorial Legislature could pass no laws *impairing* the right of property in slaves, and had said that the only power conferred on Congress (or its creature, the Territorial Legislature) was "*the power coupled with the duty of guarding and protecting* the owner [of slave property] in his rights."

But compare the resolutions proposed by the majority and by the minority of the committee at the Charleston Convention. The former were in these words:

"1st. That the Government of a Territory is provisional and temporary, and during its existence all citizens of the United States have an equal right to settle with their property in the Territory, without their rights, either of persons or property, being destroyed or injured by Congressional or Territorial legislation.

"2d. That it is the duty of the Federal Government, in all its departments, to protect the rights of persons and property to the Territories, and wherever else its constitutional authority extends."

Those offered by the DOUGLAS men, as reported in the newspapers, are as follows:

"That, inasmuch as differences of opinion exist in the Democratic party as to the nature and extent of the powers and duties of Congress, under the Constitution of the United States, over the institution of slavery within the Territories

"*Resolved*, That the Democratic party will *abide by the decision of the Supreme Court of the United States over the institution of slavery in the Territories.*"

And that decision (and Mr. DOUGLAS speaks of it as a decision in the speech from which I have quoted) goes to the extent that the slave power is entitled to all that is claimed in the majority resolutions.

But, sir, as if to place this matter beyond all possibility of doubt, Mr. DOUGLAS, in his recent speech in the Senate, has renewed the expression of his entire willingness to leave the decision of the question, whether Congress or the people of the Territories can exclude slavery from the Territories, or legislate to its prejudice therein, to the Supreme Court. He read, in confirmation of the soundness of his own position, a letter from the Hon. A. H. Stephens, of Georgia, dated May 5th, 1860, from which I make the following extract:

"And if Congress did not have, or does not have, the power to exclude slavery from a Territory, as those on our side contended, and still contend, they have not, then they could not and did not confer it upon the Territorial Legislatures. We of the South held that Congress had not the power to exclude, and could not delegate a power they did not possess; also, that the people had not the power to exclude under the Constitution; and therefore the mutual agreement was to take the subject out of Congress, and leave the question of the power of the people where the Constitution had placed it—with the courts. This is the whole of it. The question in dispute is a judicial one, and no act of Congress, nor any resolution of any party Convention, can in any way affect it, unless we first abandon the position of non-intervention by Congress."

Now, when Mr. DOUGLAS made this speech, he knew perfectly well what the Supreme Court had said the law was on this question; he knew, as everybody knows, what they will decide whenever it is brought before them, to wit: that the only authority which Congress, or the Territorial Legislatures, have over slavery, is the power coupled with the duty of guarding and protecting it. So the only difference between him and his opponents is, that while the latter ask that the Democratic platform shall express clearly the logical results of the Dred Scott decision, he desires that it shall endorse the decision in general terms, leaving it open to such interpretation in the North as he and his friends may wish to give it. That somebody is to be cheated by the political thimble-rigging now being played by the Democratic leaders, is certain; and it is quite manifest who it will not be. It will not be the Southern propagandists or Mr. DOUGLAS, for the latter, in the speech to which I have just referred, suggests to his Southern friends, that of all the doctrines now advocated, his are the best and surest for their interests.

He tells them that it is to the operation of the principle of squatter sovereignty that slavery has possession of New Mexico, and of every inch of territory outside of the States that it now occupies, and he asks whether it will not be likely to give them more by-and-by, when portions of Mexico shall be acquired.

I repeat, sir, for the point cannot be made too prominent—the Dred Scott decision, with its just deductions, covers the whole ground of difference in principle and in policy between the parties. Whoever accepts it, and acknowledges its authority as a settlement of a political question, is, and of right ought to be, a member of the so-called Democratic party; and whoever rejects it as such a settlement is a Republican, and can consistently act with no other party.

Mr. Chairman, the prompt and facile servitor of slavery, the Democratic party, respects no other interest and knows no other love. Its National Conventions, its Federal Administrations, and its Congressional majorities, are occupied exclusively with the wants, claims, and exactions, of a single interest—the interest of capital invested in men, women, and children, as articles of ownership, bargain, and sale. Pray tell me, sir, what is there in all this broad land, or beneath the sun, for which this party labors or cares, for which it thinks, or speaks, or legislates, except the advantage, the perpetuity, and the universality, of this thing of human slavery? Turn to the records of this and the other House, and show me what policies, what acts of legislation, what measures of wisdom and beneficence, it inaugurates or introdnces for the benefit of the country at large, and in behalf of all the sections; and especially, what solicitude it ever manifests for the interests of freedom, its agriculture, manufactures. and commerce, its farms and shops and ships! No; it will pay hundreds of millions for Cuba and an aristocracy of planters, but to furnish homes for the homeless, whether of the North, the South, the East, the West, or from other lands, to encourage the aspirations of honest labor, it will not give an acre of our boundless possessions. Reckless of the noble objects of government, false to the true mission of a political party, deaf to the calls of patriotism and nationality, it projects the transformation of our political system from a Republic of freemen to an Oligarchy of slaveholders; it derides the faith of the fathers; it assails the Legislative and Executive departments with the arts and instruments of corruption; it subsidizes the judicial tribunals; and erects within its own confines an iron despotism, which strikes down those of its members who would question the infallibility or check the arrogance of its master.

Mr. Chairman, it is in this unprecedented and alarming condition of the country, and against combinations and purposes such as I have described, that the Republican party enters upon the campaign of 1860. The successor and faithful representative of the Republicanism of other days, it becomes the immediate and positive enemy of the modern Democratic party. It is the only organization in the country which recognises the necessity and acknowledges the duty of resisting to the utmost the new and dangerous schemes and dogmas of the party

which has been so long in possession of the Government. Unlike another political organization, it perceives clearly that the time has come when a decisive and uncompromising stand must be taken against the aggressions of the slave power; and it feels that if there is not a party now prepared to say to this power, "No farther," it will be hopeless to expect that one faithful and brave enough to do this will arise hereafter upon any summons that may be issued. It sees that if the true and loyal patriots of the country are not justified in resisting the claims and exactions now made, nothing can be suggested, nothing attempted, nothing accomplished hereafter, which would render it their duty to make such resistance; and that they may confess and declare that henceforward there is to be no opposition to any doctrine that may be asserted, or to any injustice that may be practiced, however false and fatal they may be.

What is the obvious and unquestionable duty of the Republican party in this exigency? It declares that its purpose is to resist the extension of slavery; to maintain the Constitution and preserve the Union, by adhering faithfully to the opinions and sustaining the policy of the great men who laid so wisely the foundations of our institutions, by "restoring the Government to the principles of Washington and Jefferson," by resisting legally, but with unfaltering purpose, the efforts that are being made to convert this fairest fabric of Freedom that the round earth supports, into a Government whose cardinal policy and highest duty is the protection of slavery.

It declares, that while seeking nothing for which it has not the express and certain warrant of Washington, Adams, Jefferson, Madison, and all the great men of the heroic era, to which they are not directed and enjoined by them, and for which they have not the plain and admirable chart of the Constitution, and to which they are not drawn by the fixed and eternal polar star of the Declaration of Independence, it will submit to nothing wrong, and least of all to that change in our Government prophesied and attempted by the Dred Scott decision.

The plain and imperative duty of the Republican party is to live up in all prudence and wisdom, and in all fidelity, to these declarations—to be careful to overstep in no wise the boundaries of constitutional authority, and in all ways to respect the rights of the various sections and interests—to keep the word of honor and good faith not to the ear only, but to the hope; to show how fair, manly, and trustworthy men may be who are sincere and honest, how safe and wise those who have faith in eternal truths, and who will not, for party or office, surrender the deep convictions of their minds, but will maintain them to the end, against all entreaties, all threats, and all compromises. This, sir, for the Republicans, is the line of duty and the road to success. We believe in what we profess in our hearts and hearts; we live there, or have no life. We are strong when faithful and true, and weak when we act as if we doubted the soundness of our principles or the policy of our aims. We know and we feel that the great essential truths of our party ought to prevail, and that it is our duty to uphold and establish them; and we ought to understand that there is no greater verity than this: that "when God has told men what they ought to do, he has already told them what they can."

Let us act in the spirit of this faith, and right minded, truth-loving men will seek our fellowship, fill our ranks, and carry forward our columns. And thus, succeeding the conflict and the strife incident to all great and lasting achievements, will come the triumph—after the cross of trial the crown of honor. Then, when this party shall have been placed in power, when its influence shall have been felt, its policy understood, and its practical beneficence realized, another "era of good feeling" will ensue, and North and South again dwell together in mutual fellowship and respect. Their sons and daughters will join once more in songs of deliverance; the earth itself shall throb with a new joy, the sun shine with brighter and kindlier light, and the winds shall quire and the waters murmur the reverential hymns of peace restored.

Mr. Chairman, it may not become me, one of the humblest members of the Republican party, to make suggestions in respect to its duty, and the words that I have spoken may not be those of wisdom, but I know that they are the words of earnestness and sincerity, and I feel that they come from a heart loyal in all its recesses, and which vibrates in all its foldings to the Constitution and the Union, and to that Liberty which they were established to secure.

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